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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 67

WADE GARRETT, PETITIONER,

vs.

MOORE-McCORMACK COMPANY, INC., AND AMERICAN SCANTIC LINE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED APRIL 4, 1942.

CERTIORARI GRANTED MAY 11, 1942.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN COURT OF COMMON PLEAS, No. 5, COUNTY OF PHILADELPHIA

OPINION

SMITH, P. J.:

Wade Garrett, a seaman 40 years of age, was employed by the Moore and McCormack Company, Inc. on January 10, 1937 as a deck maintenance man with a pay of $50. per month and board and lodging on the SS Minnequa for a voyage from New York City to Baltic ports and return. About two days before the ship arrived at Gothenburg, working on the ventilator deck while there was a rough sea running, Garrett slipped and fell on the soapy deck. In falling, he threw out his left hand to save himself and caught the raising gear of a top grating over the ventilator which was open at the time. This grating fell upon him and caused him to be injured. The grating over the hatchway was a covering about 8 feet long by 4 feet wide and weighed about 200 pounds. At the rear of said grating there were hinges. It was held up and open by two braces or legs at each corner of the grating. The claim of negligence is that the cotter pins which should have been at a point where the props and hinges met were missing. The question of negligence and the quantum of injuries were left to the jury by the trial judge and the jury brought in a verdict for the plaintiff against the defendants in the sum of $4,000. The Defendants filed a point for binding instructions which was refused by the trial judge. The defendants filed motions for a new trial and judgment non obstante veredicto.

While there was considerable evidence presented from [fol. 2] which the jury might have found that the injuries claimed by the plaintiff as a result of the falling of the hatch covering upon him were of a minor nature and that those injuries now complained of were received by the plaintiff either on a prior occasion or in a brawl on shore while the ship was in one of the Baltic ports. The trial judge left the matter to the jury. In a fair and impartial charge, the evidence for the plaintiff and defendants was properly analyzed. The trial judge said on page 281 (N. T.):

"The big question in this case is whether or not Wade Garrett sustained the injury he claims he sustained as a result of this accident. On the one hand you have his statement of his injuries and on the other hand you have the contention of the defendant that all of the injuries that he sustained in this case he had before he fell. They point to the X Ray taken in 1935, and to the testimony of Dr. Russell, to the fact that there are signs of an old fracture in that X Ray in exactly the same places that he claims were fractured, by that hatch cover. If that is a fact, or if you are not satisfied by the fair weight of the evidence, that he sustained these fractures, in this accident then that goes out of the case."

Therefore, as to the question of negligence and injuries received, since the jury found for the plaintiff, all facts must be considered most favorably as presented by him. Therefore the motion of defendants for a new trial should be refused.

Insofar as the motion for judgment non obstante veredicto is concerned, the court must consider the evidence presented insofar as it relates to a release and receipt [fol. 3] which was signed and executed by the plaintiff.

After having received medical care in the town of Gdynia, Poland, Garrett returned to Jersey City on a ship of the defendant. There in the company office or at the ship, he met a man by the name of Suessmuth, an employe of the defendant in charge of claims. Garrett said to him that he wanted some money. Mr. Suessmuth informed him that the company did not owe him anything. Garrett, the plaintiff, then filed with Mr. Suessmuth a report of personal injuries sustained by him on the said ship Minnequa. When Garrett insisted that he needed some money to go to a hospital, Suessmuth advised him to go to Hudson and Jay where a hospital was located to have some X Rays taken and gave him the sum of $15. Garrett left. He returned the next day and asked for more money, saying that he had some bills to pay. This money was again advanced by Suessmuth. Two days later, the plaintiff again returned and asked for more money and was given the sum of either $2. or $3. On this occasion, the plaintiff advised Suessmuth that he "wanted whatever was coming" to him (N. T. p. 61). He admitted that at the time he pressed Suessmuth for what was coming to him, he was aware of

the fact that while in Gdynia, Poland, he had signed a voucher to the effect that he had been paid in full for services up to February 8, 1937. He testified that he can read English. He explained however, that when he signed this voucher in Gdynia, he was full of dope in the hospital and did not pay much attention to what he had signed. He testified that at the time he appeared in the office of the defendant company, he should have been entitled to three months' wages which would have been paid him had he [fol. 4] completed the *the* entire voyage which ended in March, 1937. On page 62, N. T., in reply to the question:

"Q. You shipped in New York so you knew that the money you were entitled to would be a month's wages?

"A. I figured I had three months' wages coming to me. I may have been wrong, but that's the way I figured."

The plaintiff was asked whether or not during the conversation in the defendant's office, had not Mr. Suessmuth told him of the report of the captain of the ship which showed that he had been injured in a brawl on shore instead of by the falling of the hatch covering. The plaintiff answered "I do not remember Mr. Suessmuth telling me that."

When the plaintiff demanded from Suessmuth what was coming to him, Suessmuth offered to pay him the sum of one hundred dollars if he would sign a receipt and release and then suggested to Garrett that he go home and think it over and come back the next day. Garrett returned the next day and again Suessmuth asked him if he was willing to take the sum of One hundred dollars less the sums of $10., $15., and $3. already paid him, and Garrett said yes. Suessmuth then prepared a formal receipt and release in writing, called over two witnesses who were in the office at the time, Garrett read the receipt and release, signed it and had it witnessed by the two men in the office. Suessmuth then gave him the receipt and release which was placed in an envelope together with a letter addressed to the cashier of the defendant company, and Garrett took this envelope from Pier "D", Exchange Place, Jersey City, to [fol. 5] No. 5 Broadway, New York City where the business office of the defendant was located. The Plaintiff testified (p. 70, N. T.):

"He gave me an envelope and I carried it to 5 Broadway and I gave the envelope in there and I opened it up and he

gave me a piece of paper back and I signed it, and then they gave me the money."

The receipt and release which is attached to the evidence was typed in the office of the defendant. It is a release from all claims and demands "of and from all manner of actions, suits, liens, debts, dues, trespasses, damages, injuries, sums of money controversies, agreements, claims and demands in law or admiralty etc. etc." . . . "particularly in connection with any and all injuries and illness sustained while in the service of the SS Minnequa particularly the injury sustained on or about January 28 1937 and January 23, 1937."

When Garrett signed this release under seal, he signed an additional statement at the end of the release as follows:

"I realize that I am accepting $100 for all my claims against the SS Minnequa, Moore & McCormack Company, Inc., the American Scantic Line, Inc. and U. S. Maritime Commission.

Wade Garrett."

There is ample evidence to the effect that at the time Garrett signed this release, he had knowledge of the character of a release. On at least three previous occasions, Garrett had had accidents on a number of other vessels [fol. 6] (P. 36, N. T.) and still had a case pending against the Southern Steamship Company for an alleged injury on one of its ships. Garrett admits signing three releases for injuries on the SS Pontiac, SS James J. Hill, and SS George Humphrey, all prior to the time that he shipped as a sailor on the SS Minnequa.

The plaintiff attempts to overcome this written release and receipt executed by him by his own evidence uncorroborated. He testified that the reason he executed the release was because Suessmuth had said to him: "If you don't sign here and take your money and go to Chicago, I am going to put you in jail." Garrett furthermore said: "I was drunk." He further testified: "I had taken about half a dozen of them (vernal pills) the night before and some the next morning just before I went to see him." The plaintiff did not present any evidence from anyone else to the effect that anyone had seen him drunk that morning or that anyone had observed that he was in an unnatural condition as a result of taking a large amount of sedatives.

On the contrary, Philip Yarnell, one of the witnesses to the release, testified that he heard Suessmuth say to Garrett, "You read the contents of this release before you sign it so that I (you) will know what you are signing." Yarnell further testified that Garrett did read the receipt and release and after having done so, signed it.

Suessmuth testified that every time Garrett came into the office of the defendant on the three occasions above mentioned, he was sober. He testified that on the day he signed the receipt and release, he was sober and was not at all dopey [fol. 7] or dazed. Suessmuth testified that when Garrett came into the office, "he advised me that he had decided to accept our offer of $100." Suessmuth testified that he had the receipt and release typed and that he gave it to Garrett and told him to read it and that Garrett read the receipt and release. Suessmuth further testified that he asked Garrett if he would sign it and Garrett answered yes. Then it was that Suessmuth called over the two witnesses and in their presence Garrett signed the said instrument. Suessmuth testified that he wrote a memorandum to the cashier of their New York office, enclosing the release, that he put them in an envelope and gave them to Garrett. Suessmuth was asked whether or not Garrett was sober at that time and he testified "he was perfectly sober." He was further questioned "Did he show any signs of alcohol or drinking?" He answered "None at all." When further questioned as to whether the plaintiff showed signs of being dopey or not knowing what he was doing he replied "none at all."

Under the cases of this Commonwealth, it is the duty of the court to determine as a matter of law whether the quantum and character of evidence presented by a plaintiff to overcome a release in writing meets the burden of proof. If the evidence is not clear, precise and indubitable, the court must withdraw the case from the jury. Considering all the evidence presented surrounding the execution of this written instrument by the plaintiff we are of the opinion that he has failed to meet this burden of proof.

The plaintiff admitted that he was an American and could read and write. His explanation that he was drunk; affected [fol. 8] by *by* vernal; that the agent had threatened to have him arrested if he did not sign it, indicates to some degree at least that he knew he was signing a release. He first attempts to overcome the written instrument by testimony

that he was drunk or affected by drugs and did not know what he was doing, and yet on the other hand, he attempts to explain his execution of this release by stating that the agent of the company made him sign it under the threat of an arrest. It is hard to understand what particular offense Garrett could have committed to cause him to be arrested, so that considering these two statements, it must be admitted that the evidence presented by the plaintiff to overcome the written instrument is flimsy and not to be believed.

If by this type and character of evidence uncorroborated by any other evidence or by circumstances surrounding the signing of the release, a plaintiff could be permitted to overcome a solemn written document, then the legal rule that such evidence must be clear, precise and indubitable would be absolutely worthless.

In the case of Penna. R. R. v. Shay, 82 Pa. 198, Mr. Justice Sharswood held that even where it is intended that the release was procured by fraud "the evidence of fraud must be clear, precise or indubitable; otherwise it should be withdrawn from the jury."

In the case of Lindemann v. Pittsburgh Rwys., 251 Pa. 489, it was stated: Indubitable proof is evidence that is not only found to be credible but of such weight and directness as to make out the facts alleged beyond a reasonable doubt.

In the case of Ralston et ux. v. Phila. R. T. Co., 267 Pa. [fol. 9] 257, Mr. Justice Moschzisker reported many cases in this Commonwealth on this question. On page 275, he said:

"* * * the evidence clearly fails to measure up to the required legal standard, which, as hereinbefore shown, is that in such cases the proofs must be clear, precise and indubitable. The first mentioned requirements mean that the witnesses must be credible, distinctly remember the facts to which they testify and narrate the details exactly (Lindemann v. Pittsburgh Rys. Co., supra); and, to the extent we are at present concerned with the last requirement—that the statement of the witnesses must be indubitable, or true (that is, so far as we are concerned with its application to the preliminary consideration of the evidence by the court, to judge of its sufficiency to go to the jury. * * *"

In the case of Horsey v. Ciaroro, 280 Pa. 513, Mr. Justice Sadler on p. 516 said:

"Though the sum accepted may have been small, and the fee for services, charged by Acker, large, yet this is not sufficient to establish such fraud as to justify setting aside the release.

'Where, in a negligence case, defendant sets up a release of damages executed by plaintiff, and the latter seeks to have the jury disregard it, and the essential facts in regard to its execution are in dispute, the burden is on plaintiff to [fol. 10] prove the facts upon which she relies, beyond a reasonable doubt, by evidence which is clear, precise and indubitable, and by witnesses who are credible, who distinctly remember the facts to which they testify and narrate the details exactly': Ralston v. P. R. T., Co., 267 Pa. 257."

In the case of Walker v. Harbison, 283 Pa. 111, Mr. Justice Kephart on page 114 said:

"We do not know how a stronger case of ratification could be made out. The sole evidence as to the execution of the release came from defendant's side of the case, and it clearly shows there was no fraud practiced on plaintiff. Assuming he may not have been mentally capable of executing the release, there is no evidence here that would charge this defendant with knowledge of that condition. When plaintiff was in the office of defendant's agent, the evidence shows him to have been normal."

In the case of Broida v. Travelers Insurance Company, 316 Pa. 444, it was left to the jury because of the testimony by a witness corroborating the testimony of the plaintiff regarding the signing of the release. Mr. Justice Drew on pp. 447 and 448 said:

"Nor can we agree with defendant's contention that the evidence is not clear, precise and indubitable. It may be conceded at once that it is necessary for this to be true before [fol. 11] reformation can be properly granted; see Stine v. Sherk, 1 W. & S. 195; Sylvius v. Kosek, 117 Pa. 67; Graham v. Carnigie Steel Co., 217 Pa. 34; Burt v. Burt, 221 Pa. 171. Whether the evidence meets this standard is, in an action at law, a question for the trial judge, and his ruling is open to review here: Rowand v. Finney, 96 Pa. 192; Sylvius v. Kosek, supra; Ralston v. P. R. T. Co. (No. 1), 267 Pa. 257. The phrase has a technical legal meaning. That meaning is that the witnesses must be found to be credible, that the

facts to which they testify are distinctly remembered and the details thereof narrated exactly and in due order, and that their testimony is so clear, direct, weighty, and convincing as to enable the jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue; see Highlands v. R. R., 209 Pa. 286; Burt v. Burt, supra; Ralston v. P. R. T. Co., supra. It is not necessary that the evidence be uncontradicted (Honesdale Glass Co. v. Storms, 125 Pa. 268; Highlands v. R. R., supra; Burt v. Burt, supra), provided it 'carries conviction to the mind and if' (Burt v. Burt, supra), or 'carries a clear conviction of its truth' (Honesdale Glass Co. v. Storms, supra; Highlands v. R. R., supra)."

It would therefore appear that under the cases of this Commonwealth, the plaintiff has failed to meet his burden of proof and that the case should have been withdrawn from the jury.

It was argued by the plaintiff's counsel that the law of Pennsylvania does not apply, but that we must apply the [fol. 12] law of the Federal courts. In Admiralty cases, the responsibility is on the defendant to sustain a release rather than on a plaintiff to overcome it. Thus if the plaintiff had instituted his action in trespass in admiralty, this would be so, for a seaman in admiralty is regarded as a ward and given every possible protection. In admiralty, a hearing is before a Chancellor without a jury and all the questions of law and fact are before a judge sitting as a chancellor. *There is sufficient precedent in the admiralty courts to sustain the contention of the plaintiff had he been inclined to bring his action there.* This court has made a thorough search to ascertain whether or not in any of the state courts there is any indication that a seaman is a ward of the law, state or federal, and this court has failed to find any citation to sustain that point. *The plaintiff could have brought his action in either the admiralty, federal or state court, and he selected his forum in this court. Therefore, he is bound by law of Pennsylvania.* It was held in Atlee v. Packet Co., 21 Wallace (U. S.) 389 that a plaintiff who has the selection of the *a* forum in which to litigate his claim cannot complain of the rule of that forum.

In Goodrich on Conflict of Laws, page 197, it is stated:

"It has already been stated that matters of procedure are in general determined by the internal law of the forum.

It would naturally follow that the rules of evidence should be so classified. These relate to the way in which a case is to be proved, how facts are to be established. If the lex fori requires proof of a certain kind, it would not seem to [fol. 13] matter whether the cause of action arose within or without the jurisdiction. This is the general rule." • • •

(P. 198) "The ordinary presumption is not a rule of substance but one of procedure. It 'attaches to one evidentiary fact certain consequences as to the duty of production of other evidence by the opponent,' in other words, determines, under certain circumstances which party has the burden of going ahead with further evidence. It relates, therefore, to the manner in which facts are to be proved, rather than to the facts themselves, and it would be expected that it should be called a matter of procedure, governed by the law of the forum. The authorities so hold. The same would be true in deciding the question whether a plaintiff had established, on the facts, a case sufficient to go to the jury."

"The law of the forum governs presumptions and inferences to be drawn from evidence; Restatement of the Law of Conflict of Laws, Section 595 (2).

In Singer v. Messina, 312 Pa. 129, where the question arose as to how the matter of contributory negligence should be considered—whether under the law of New Jersey where the accident occurred or by the law of Pennsylvania where the suit was instituted. Mr. Justice Schaffer on p. 135 said:

"Under such circumstances, the correct rule is that the procedure followed in the forum is controlling when the [fol. 14] question is whether the court or the *the* jury shall pass upon the problem. This is the rule laid down in the American Law Institute's Restatement of the Law of Conflict of Laws in section 642, where the following appears: 'Mode of trial. The law of the forum determines whether an issue of fact shall be tried by the court or by a jury.'"

See also Tobin v. Penna. R. R., 100 Fed. (2) 435 and Belden v. Chase, 150 U. S. 674.

In the case of Litwinowitz v. Oriental Navigation Co., the Court of Common Pleas No. 5 of Philadelphia County granted a motion for judgment non obstante veredicto for

the defendant, in a case where a stevedore was injured by an alleged act of negligence on the part of the steamship company. On reargument, the plaintiff contended that the federal law applied. In an Opinion by this court, it was held:

"It has been, therefore, distinctly held that in admiralty the comparative negligence rule applies while in the State Court the common law rule of contributory negligence bars recovery."

This case was affirmed in 311 Pa. 257, although no mention was made in that Opinion as to the question of contributory negligence.

In the case of Penna. R. R. v. Hughes, City of Long Branch 1931 A. M. C. 852, Judge Hand of the Circuit Court of Appeals of the Second Circuit stated:

"However, it was held in Belden v. Chase, 150 U. S. 674, [fol. 15] that when action is brought at law in a State Court for a collision upon navigable waters, the Plaintiff loses, if himself negligent * * * conversely, it is well settled that when the libellant sues in Admiralty upon a tort arising within the territorial waters of the State, his contributory negligence does not defeat him altogether; he need only divide his damages."

In the case of Basford v. Standard Shipping Company, 1934 A. M. C., 1074, a seaman signed a release and then brought suit in a State Court. The court there held:

"I perceive nothing in the record which would authorize lifting the case from the general rule that 'the signer of a deed or other instrument expressive of a jural act is conclusively bound thereby'. Pimpenello v. Swift & Co., 253 N. Y. 159."

The testimony produced by the plaintiff is entirely unreliable. He was aware of the attitude taken by the defendant toward his alleged claim. On three different occasions, he accepted money from the agent of the defendant and when he asked for what he claimed was due him, an offer was made him by the agent for the defendant. Showing some reluctance about accepting it, he was told to go home think it over and come back the next day. This he did. It seems hard to believe that when he knew he was returning for the purpose of adjusting his claim with

the agent of the defendant, he would fortify himself with drink and sedatives. We must consider the other state-
[fol. 16] ment that he was forced to sign the release under threat of arrest, and we furthermore must not forget that on at least three prior occasions, he had signed releases and was aware therefore of their import. Furthermore, in considering his credibility, we must not forget that when questioned whether in 1935 (two years before) he had made a claim against the Southern Steamship Company for an injury to his back, his answer was No. The statement of claim presented in that case was put in evidence and a reading of Paragraph 8 thereof shows his statement: "He was violently wounded, jarred and generally shaken about the head, body, spine, arms, legs and feet, and particularly his face and jaw were swollen and discolored, several teeth knocked out and several ribs broken."

When one considers that the major portion of his claim of injuries is that he has arthritis from the injury received to his spine, one can see how doubtful this claim for injuries is. When his own physician, who had testified as to what the X Ray taken in 1937 disclosed, was shown an X Ray plate which was after the accident in 1935 and was asked if those were the same fractures he saw in the X Ray plates (those of 1937) his reply was Yes.

It therefore seems clear that the condition from which this man alleges he is now suffering was present in 1935. It may well be that the arthritic condition has developed, but the same fracture existed in both X Rays.

We therefore believe that the plaintiff having chosen his forum, is bound by the laws of Pennsylvania.

[fol. 17] We have also found by consideration of the evidence that the plaintiff has failed to overcome the import of the receipt and release signed by him. It is evident that such evidence was not clear, precise and indubitable.

In Court of Common Pleas No. 5, County of Philadelphia.

FINAL JUDGMENT

And now, to wit this 7 day of April, 1941, the defendants' motion for a New Trial is refused; the defendants' motion for judgment non obstante veredicto is sustained, and judgment is entered for the defendants.

By the Court: (Sgd.) Smith, J.

[fol. 18] In Supreme Court of Pennsylvania, Eastern District, January Term, 1941

No. 209

Wade Garrett, Appellant,

v.

Moore-McCormack Company, Inc., and American Scantic Line

Appeal from the Judgment of the Court of Common Pleas No. 5, of the County of Philadelphia, as of March Term, 1937, No. 3221

Opinion of the Court—Filed January 5, 1942

Linn, J.:

Plaintiff, a seaman, sued on two causes of action: (1) pursuant to Section 33 of the Jones Act,[1] 41 Stat. 1007, 46 U. S. C. A. section 688, for damages for negligence; and (2) for maintenance and cure under the admiralty law. He declared for $100,000. The defence was that plaintiff had released his claims. The jury rendered a verdict, "$1,000 for maintenance, and $3,000 for pain, injury and wages." Defendants moved for judgment n. o. v, and their motion was granted on the ground that the evidence was

[1] "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employes shall apply; * * *" Section 1 of the Federal Employers' Liability Act provides: "Every common carrier, by railroad while engaging in [interstate] commerce * * *, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce * * * for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employes of such carrier * * *" [35 Stat. 65, 45 U. S. C. A. section 51].

insufficient to support a finding that plaintiff's release was invalid. The plaintiff appealed.

Plaintiff was employed as a deck maintenance man on board the S/S MINNEQUA at $50 per month, etc., for a voyage to Baltic ports and return. The voyage began [fol. 19] January 10, 1937, and ended March 5, 1937. He claimed for various injuries but particularly for serious injury to his back, a fracture of the lower transverse spinal processes, which, he alleged, resulted from the fall on him of a defectively fastened ventilator cover. We accept his statement, because corroborated by one of respondent's witnesses, that the accident occurred the day before the vessel reached its first port, Gothenburg, and then he received first aid and went to bed. During the six-hour period the vessel remained in that port, plaintiff remained on board. The next port, Copenhagen, was reached a day or so later and there plaintiff went ashore and, at the captain's request, was examined by respondent's doctor who gave plaintiff a written report, identified by him and in evidence, stating that he had contusions of the first and second fingers of the left hand, no fracture; "The contusion of the right foot is not much. It will be best in treating the fingers that the man don't work for three days with the hand." He remained on shore some time. He testified that he went to a place where he had "some drinks" and that he returned to the ship with a note from the proprietress of a restaurant asking that the captain put him in funds to pay her bill of 30 kroners. The captain testified that, before landing at Copenhagen, he had noticed that plaintiff's hand was painted with iodine and that he instructed him to go to the company's doctor and report back. The captain also testified that on the evening of plaintiff's return to the ship when he brought to him the note requesting the payment of money for the restaurant keeper, the plaintiff "was bleeding from the mouth, and his jaw was swollen." These were injuries the captain had not observed in the morning and the doctor had not found on his examination; obviously they were inflicted on shore. The captain said he declined to give plaintiff the amount because it was more than was owing to him. The ship sailed from Copenhagen the next morning, January 29th, and arrived at Gdynia, Poland, on the morning of the 30th, when the plaintiff informed the captain that he thought his jaw was broken; the captain then

directed that he be taken to a hospital. At the hospital [fol. 20] he was x-rayed and put to bed. He testified that plaster casts were applied to his head and leg and he was put "on fracture boards" for his back. The plaster casts which he says were applied to his head were, we assume, required by the condition of his jaw described by the captain. The ship returned without the plaintiff. Subsequently respondents arranged for his discharge from the hospital and his return on another of their vessels. When the vessel on which he returned arrived at Jersey City, March 18, 1937, he went to the company's office and reported to respondents' agent at the latter's request. Plaintiff testified he said to the agent, "I would like to get what money I have coming to me and go to a hospital. I'm very sick." The agent sent him to the Marine Hospital where x-rays were again taken. At that time the agent paid him $15. because he said he had no money; the next day he received $10., and the day after, $3.; for each payment, he signed a simple receipt. He testified that he thought he had three months' wages due him though he must have been mistaken about that because, by an itemized voucher in the record, he had acknowledged the receipt at Gdynia of his wages in full to February 8th. The voyage, for which he engaged, ended March 5th. During the trial he denied that he had made any claim to the agent for injury, asking only for wages. Respondents' evidence is that he also claimed for injury and was told that the only injury that they believed he had sustained on board was the trivial injury to the fingers reported by the Copenhagen doctor.

On March 24, 1937, in the respondents' office he signed a formal release of all claims; he read the release which was witnessed by two subscribing witnesses and bears a notary's certificate of acknowledgment. The respondents had offered to settle all claims for $100., less the $28. which they had advanced to him, as has been stated, on and after March 18th. He testified that the company's agent said to him, "If you don't sign here and take your money and go to Chicago, I'm going to have you put in jail." He said he had been drinking and had been taken "vernal [veronal?] pills." Asked at the trial, how he was [fol. 21] "feeling at that time," he replied, "I was sick. I said, 'Give me the money' and he wrote it out and said, 'You take this over to 5 Broadway.'" The agent who took

his release did not pay him but gave him the release and directed him to take it to the company's office in New York where the cashier would make payment. He went there and "handed this paper to a man in the office and he tore it open and he handed me back a piece of paper and I signed it, and gave it back to him and he gave me $72." He returned "to Hudson and Jay [Marine Hospital] to get [his] discharge" and then came to Philadelphia.

His own testimony shows that he had been injured a number of times, sometimes on ships, sometimes in fights. For some of these injuries, he received compensation and executed releases and was therefore not unfamiliar with such instruments. For one claim "around April 2nd, 1932" he said he received $4,500. At the time this suit was tried, he had pending an action against the Southern Steamship Company to recover for injuries received in August, 1935. He denied that he claimed in the present suit for the same injuries for which he was claiming in the suit against the Southern Company, but, when confronted with it, admitted his signature to the statement of claim which contained an averment, inter alia, for injury to back and spine. In the present suit he also claimed for injury to the back and spine. The court in banc said: "The testimony produced by the plaintiff is entirely unreliable. He was aware of the attitude taken by the defendant toward his alleged claim. On three different occasions, he accepted money from the agent of the defendant and when he asked for what he claimed was due him, an offer was made him by the agent for the defendant. Showing some reluctance about accepting it, he was told to go home, think it over and come back the next day. This he did. It seems hard to believe that when he knew he was returning for the purpose of adjusting his claim with the agent of the defendant, he would fortify himself with drink and sedatives. We must consider the other statement that he was forced to sign the release under threat of arrest, and we furthermore must not forget that on at least three prior occasions, he had signed releases and was aware therefore of their import. Furthermore, in considering his credibility, we [fol. 22] must not forget that when questioned whether in 1935 (two years before) he had made a claim against the Southern Steamship Company for an injury to his back, his answer was No. The statement of claim presented in that case was put in evidence and a reading of Para-

graph 8 thereof shows his statement: 'He was violently wounded, jarred and generally shaken about the head, body, spine, arms, legs and feet, and particularly his face and jaw were swollen and discolored, several teeth knocked out and several ribs broken.'

"When one considers that the major portion of his claim of injuries is that he has arthritis from the injury received to his spine, one can see how doubtful this claim for injuries is. • • •

"It therefore seems clear that the condition from which this man alleges he is now suffering was present in 1935. It may well be that the arthritic condition has developed, but the same fracture existed in both X Rays."—

The evidence offered by defendants would support a finding that the only injuries received "in the course of his employment," or in the service of the ship, were those which were referred to by the Copenhagen doctor in his report.

Instead of filing his libel in admiralty, where his case would have been tried by a judge without a jury, or of suing at law in the District Court, plaintiff, as he had the right to do, sued in the state court to assert a common law remedy with trial by jury. It was the duty of the state court to apply the federal law creating the right of action in the same sense in which it would have been applied in the federal courts. This, we think, was done.

The important point now is whether plaintiff has been deprived by local rules of evidence of a substantive right under the federal law. In dealing with this contention, the effect of the evidence in the record may perhaps be considered as follows: plaintiff presented evidence which, if believed (and apart from the release) would have made out a prima facie case; defendants, to destroy that case, relied [fol. 23] on evidence that the claims had been discharged by payment and release; in other words, plaintiff had offered proof of his causes of action and defendants had offered proof that they had been released. What should be done with the record in that condition?

It is a rule of evidence in this state, that, to set aside a written release of claims, the trial judge, before he may submit evidence on the subject to the jury, must preliminarily determine the fact that the evidence offered against

the release is clear, precise and indubitable: *Scanlon v. Pittsburgh Rys. Co.*, 319 Pa. 477, 480, 181 A. 565; *Aliquippa Nat'l Bank v. Harvey*, 340 Pa. 223, 231; 16 A. 2d 409.

It is unnecessary, in disposing of this appeal, to consider whose duty it was to put in the evidence on the subject because none was excluded; all the evidence is in and the legal question is what is its effect? As the evidence was insufficient to go to the jury, the learned trial judge should have directed a verdict for defendants on the ground that the release was valid. The verdict not having been directed, as requested by defendants, it was the duty of the court in banc, in considering defendants' motion for judgment non obstante veredicto, to decide whether the evidence should have been submitted to the jury (Act of April 22, 1905, P. L. 286, as amended, 12 PS section 681; *Hostetler v. Kniseley*, 322 Pa. 248, 249-250, 185 A. 300) and if insufficient, to enter judgment for the defendants. On passing on that motion, the learned court concluded that plaintiff's evidence and that offered on his behalf was not sufficient to support a finding that the release was invalid and therefore entered judgment notwithstanding the verdict.

There is no doubt about the principle, for which appellant contends, that a state may not require a plaintiff to prove, as part of his cause of action under federal law, more than what constitutes the cause of action as defined by that law. *Central Vermont Railway v. White*, 238 U. S. 506, held that the state law, requiring a plaintiff in a tort action to show that he was not guilty of contributory negligence, could not be applied in establishing a cause of action under the Fed-
[fol. 24] eral Employers' Liability Act because the state law, if applied in such action would require a plaintiff to establish as an element of the cause of action a fact which was not part of it by the federal law. *Engel v. Davenport*, 271 U. S. 33, decided that the state could not require the suit to be brought in one year when the Congress had provided that a plaintiff should have two years in which to assert his federal right of action. The application of the same principle necessarily prohibits the state from depriving a defendant of the right to insist that plaintiff shall prove all the elements of his cause of action: *New Orleans & N. E. R. R. Co. v. Harris*, 247 U. S. 367. See, also *Great Northern Railway Co. v. Washington*, 300 U. S. 154.

The terms "rule of evidence" and "burden of proof" have different meanings in different contexts.[2] The plaintiff here was not subjected to the burden of proving, as an element of the cause of action, something which was not an element by the federal law. Nothing that plaintiff wished to put in the record was excluded pursuant to the local rule. This rule, as applied in this jurisdiction, is merely a rule of evidence or trial procedure. It probably had its origin in chancery practice and, as this Commonwealth had no court of chancery but administered equity in common law courts, the rule became part of common law procedure. It provides for measuring the quantum and quality of proof necessary to guide the judge in determining whether an issue of fact for the jury has been presented. We have not been referred to any decision of the Supreme Court determining the point now before us, but it may be noted that in the field of conflict of laws most decisions and text writers [fol. 25] agree that rules of evidence are rules of procedure controlled by the law of the forum.[3]

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[2] Maguire and Epstein: Preliminary Questions of Fact in Determining The Admissibility of Evidence, 40 Harv. L. Rev. 392; Morgan: Functions of Judge and Jury in the Determination of Preliminary Questions of Fact, 43 Harv. L. Rev. 165; Morgan: Instructing the Jury upon Presumptions and Burden of Proof, 47 Harv. L. Rev. 59; See, generally, Cook: "Substance" and "Procedure" in the Conflict of Laws, 42 Yale L. J. 333.

[3] *Singer v. Messina*, 312 Pa. 129, 167 A. 583; *Fortein v. D., L. & W. Ry. Co.*, 90 N. J. L. 137, 100 A. 194; Restatement, Conflict of Laws, sec. 595, comment a, page 710; comment b, page 711. And, see, *Martin v. Burgess*, 82 F. (2d) 321 (C. C. A. 5th). Goodrich, Conflict of Laws, (2d ed.) pp. 197, 198: "It has already been stated that matters of procedure are in general determined by the internal law of the forum. It would naturally follow that the rules of evidence should so be classified. These relate to the way in which a case is to be proved, how facts are to be established. If the lex fori requires proof of a certain kind, it would not seem to matter whether the cause of action arose within or without the jurisdiction. * * * The same would be true in deciding the question whether a plaintiff had established, on the facts, a case sufficient to go to the jury." Beale,

We have been referred to cases in which seamen's releases were considered by admiralty courts. In *The Adonis*, 38 F. (2d) 743, decided in this Circuit, it appeared that a seaman filed a libel for maintenance and cure and for damages for injuries. Respondent set up a release. In reaching the same conclusion that was reached by the judge below, the Circuit Court of Appeals said: "We realize that a release of this kind is not a bar preventing inquiry into the seaman's rights. It can always be looked into. The Topsy (D. C.) 44 F. 631; The David Pratt, 1 Ware, 510, Fed. Cas. No. 3597. But a release of this kind, formally [fol. 26] signed, sealed, and witnessed, is, however, prima facie good, and cannot be set aside unless it was obtained by duress, mistake, or, in this case, by fraud, in that the instrument admitted in evidence is not in all respects the instrument the seaman signed. • • •

"The libellant realizing that to put the release out of the case he must sustain the burden of proving that he signed it through duress, fraud, or mistake, says, finally, that he signed it through mistake in that he did not read it, and 'thought it was a receipt for the $125 (he) was getting.' There is no evidence that the libellant could not read. There is evidence that he looked at the paper. He signed it. He is therefore presumed to have known and understood its contents. The Henry S. Grove (D. C.) 22 F. (2d) 444. Had he read it, he could not have been misled into believing it was anything short of a release. There is no evidence that the Casualty Company did anything to induce him to sign the paper other than tender him a check for the amount agreed upon, or said anything to make him believe it was a mere receipt. Indeed, the record is bare of a suggestion that the libellant was tricked into signing the paper by false representations of the company's agent. The Annie L. Mulford (D. C.) 107 F. 525; The Belvedere (D. C.) 100 F. 498. After a careful consideration of the testimony, we are constrained to hold that there is far too little to have justified the trial court,

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Conflict of Laws (1935) vol. 3, p. 1611: "The close connection between the ordinary presumption and problems of burden of proof is readily apparent. Hence it is not surprising that courts have held that burden of proof is procedural and governed by the law of the forum."

or to justify this court, on trial de novo, in declaring the paper invalid because of duress, fraud, or mistake."

The appellant says that when a release is relied on in the Second Circuit (Hume v. Moore-McCormack, 121 F. (2d) 336) the employer must show affirmatively that there was no fraud. With the evidence all before us, it is not important, to consider whether different results on similar evidence could properly be reached in admiralty in the two circuits; presumably the courts would reach the same result, for, after all, the judge, whether in the admiralty or at law is responsible for his decision on the evidence presented. We think there is no substantial difference in the subjective process by which the judge in admiralty [fol. 27] arrives at the ultimate fact—the effect to be given to a release—and the same process by which a judge presiding at law would reach or permit the result to be reached by a jury. Such procedural difference, as exists, is the necessary result of the presence of the jury in one case and not in the other.[4]

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[4] Wigmore, Evidence, (3d ed.), vol. 9, page 278, section 2487, says: The inquiry peculiarly concerns the procedure in legal controversies; but the settlement of it was not affected by the nature of the tribunal. The tribunal might be a judge, or a jury, or both, so far as regards apportioning the risk of non-persuasion. Nothing has been said, or need be, about a distinction between *judge* and *jury*. But we come now to a peculiar set of rules which have their source in the bipartite constitution of the common-law tribunal. Apart from the distinction of functions between judge and jury, these rules need have had no existence. They owe their existence chiefly to the historic and unquestioned control of the judge over the jury, and to the partial and dependent position of the jury as a member of the tribunal whose functions come into play only within certain limits.

"The treatment of the situation, and the operation of the rules, can best be comprehended by keeping this consideration in mind, namely, that the *opportunity to decide finally upon the evidential material that may be offered does not fall to the jury as a matter of course;* that each party must first with his evidence pass the gauntlet of the

[fol. 28] We should perhaps add that if we had concluded that the judgment should be reversed on this, the plaintiff's appeal, we should not have directed judgment to be entered on the verdict but should have been required, by our consideration of the evidence, to have re-instated defendants' motion for a new trial and remitted the record for consideration by the court below of that motion.

Judgment affirmed.

[File endorsement omitted.]

[fol. 29] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—May 11, 1942

On Consideration of the motion for leave to proceed further herein *in forma pauperis*,

It is ordered by this Court that the said motion be, and the same is hereby, granted.

[fol. 30] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 11, 1942

The petition herein for a writ of certiorari to the Supreme Court of the Commonwealth of Pennsylvania is granted.

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judge; and that the judge, as a part of his function in administering the law, is to keep the jury within the bounds of reasonable action. In short, in order to get to the jury on the issue, and bring into play the other burden of proof (in the sense of the risk of non-persuasion of the jury), both parties alike *must first satisfy the judge that they have a quantity of evidence fit to be considered* by the jury, and to form a reasonable basis for the verdict. This duty of satisfying the judge is peculiar in its operation, because if it is not fulfilled, the party in default loses, by order of the judge, and the jury is not given an opportunity to debate and form conclusions as if the issue were open to them."

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1086)

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CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 67

WADE GARRETT,

Petitioner,

vs.

MOORE-McCORMACK COMPANY, INC., AND AMERICAN SCANTIC LINE.

BRIEF ON BEHALF OF PETITIONER ON WRIT OF CERTIORARI.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 67

WADE GARRETT,

Petitioner,

vs.

MOORE-McCORMACK COMPANY, INC., AND AMERICAN SCANTIC LINE.

BRIEF ON BEHALF OF PETITIONER ON WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

The opinion of the Court of Common Pleas No. 5 in the County of Philadelphia (R. 1-11) was rendered under date of April 7, 1941 and is reported in 1941 A. M. C. 817.

The opinion of the Supreme Court of Pennsylvania (R. 12-21) was rendered on January 5, 1942 and is reported in 344 Pa. 69.

II.

Jurisdiction.

This case is within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

The jurisdiction of this Court was invoked by a petition for a writ of certiorari to the Supreme Court of Pennsylvania, which was granted on May 11, 1942.

III.

The Statement of the Case.

This suit was brought by petitioner (Plaintiff below) to recover damages and the cost of his maintenance and cure for certain personal injuries alleged to have been sustained in the course of his employment on respondent's vessel. Respondent defended the action on the merits of the case and in addition thereto pleaded a complete release.

Petitioner has been following the sea for some 22 years holding a certificate of able seaman (R. 21a)[1]. He joined the respondent's steamship "Minnequa" as a deck maintenance man about January 7, 1937 at the rate of $50.00 per month and found, for a foreign voyage from New York to Baltic Ports and return for a period not to exceed one year. Before proceeding with the voyage he was given a physical examination by respondent's physician and pronounced physically fit (R. 22a, 23a).

While the vessel was in the North Atlantic Ocean, enroute to its first port in the Baltic Sea, petitioner in the course of his employment was engaged in washing down the ventilator deck when he slipped on the soapy surface and in falling upon the coaming of the open ventilator his foot struck one of the hinges supporting the ventilator cover, thereby causing the ventilator cover to swing down upon petitioner. The ventilator cover was about 8 feet long by 4 feet wide, weighing about 200 pounds. It was normally supported by hinges secured by cotter pins, but on this occasion the cotter pins were missing and as a result

[1] Note. All references to the record followed by the letter "a" refer to the typewritten record filed with the petition for the writ of certiorari.

when the hinge was struck and loosened from its place there was no support for the ventilator cover. Petitioner having fallen directly beneath it facing upward with his back upon the coaming beneath him attempted unsuccessfully to halt the downward swing of the cover but the weight was too great and he sustained a fracture of the hand and leg and jaw and several of the transverse processes of his vertebrae were fractured by the coaming beneath him. He was treated aboard the vessel with liniment and adhesive tape and put to bed (R. 23a to 27a). The vessel arrived at Gothenburg, the first port of call, where it remained for about six hours, but petitioner remained in his bunk and was not taken ashore for treatment (R. 27a, 28a). At Copenhagen, the second port of call, he was taken ashore to the respondent's doctor who made a physical examination but took no X-rays. The testimony of this doctor was not taken but respondent offered a slip of paper signed by the physician and intended for the master of the vessel stating that the petitioner had an injury to his left hand and right foot and recommended a lay-off from work for three days. The slip further shows that there are no fractures although no X-rays were taken (respondent's Ex. 2, R. 28a). No other report showing the nature of the examination was introduced by the respondent nor was the testimony of this physician taken.

The vessel next called at the Port of Gdynia, Poland, where petitioner was again taken ashore, this time to the hospital where after examination and X-ray he was immediately put to bed. Plaster casts were applied to his hand, leg and face, and he was treated for a fractured back by being placed on fracture boards (R. 30a, 31a, 32a). The record of that hospital, in the Polish language with a translation by an official court interpreter, was offered in evidence by petitioner but was excluded from the record on respondent's objection (R. 31a).

Respondent's agent arranged for petitioner's discharge, from that hospital and his repatriation to the United States on another of its vessels "City of Fairfield" (R. 32a).

Upon his return to New York petitioner was met by respondent's claim agent Mr. Suessmuth who came aboard the ship looking for him and then directed him to go with him to his office on the dock (R. 34a, 35a). Petitioner testified that he claimed the balance of wages due him to the end of the voyage and the claim agent then sent him to the United States Marine Hospital in New York for the purpose of taking X-rays (R. 35a). Petitioner claimed that he had over $100.00 owing to him for wages to the end of the voyage (R. 36a). On that day March 18, 1937, he received an advance of $15.00, the following day $10.00 and on the 23rd of March, he received $3.00 (respondent's ex. 4, 5, 6). The following day he returned in an intoxicated condition after having taken about one-half dozen veronal pills. On this occasion the claim adjuster said to him "If you don't sign here and take your money and go to Chicago I am going to have you put in jail." Petitioner signed the instrument which is now alleged to be a complete release and then was given an envelope to take to the office of the company where he was given $72.00 (R. 37a). Petitioner testified that it was his understanding that the money which he received was in payment of the balance of wages due him to the end of the voyage, that he did not know he was signing a release (R. 37a, 76a, 77a, 78a). This testimony was denied by Mr. Suessmuth, the claim agent, who stated that he had made no threats, that the petitioner was cold sober and that he did not appear to be suffering or discomforted in any way. Petitioner was admitted shortly thereafter to the United States Marine Hospital in New York where he was placed on fracture boards for treatment of the

fractures of the spine and given daily heat treatment and massage. He remained in the hospital for two or three months (R. 38a, 39a). Following his discharge from that hospital he made several short voyages and was then admitted to the United States Marine Hospital in Cleveland, Ohio where it was found that in addition to the injuries previously set forth, he is suffering from tuberculosis. He has since been receiving treatment for his back and for the tubercular condition (R. 41a). No claim has been made for the latter condition. At the trial of the case respondent introduced an X-ray which purported to have been taken in 1935 by the Public Health Service in Philadelphia and which showed fractures of the 3rd and 4th transverse processes. The X-ray plate itself had two different numbers upon it, both in handwriting, and not in the usual printed form and the envelope within which the plate was contained was marked on the outside "Negative". The plate was introduced for the purpose of showing that the petitioner suffered from fractures on the spinal processes before this accident. Petitioner then promptly offered the entire record of the Public Health Service from which the aforementioned X-ray plate had been taken. This record included the report of the government X-ray specialist who had read the plate which was taken in 1935 and whose report showed the plate which he took at that time to be negative for fractures. This offer was objected to by the respondent and the objection was sustained by the Trial Judge so that the X-ray plate went into the evidence without the report of the specialist which was made at the time the original X-ray was taken.

The jury brought in a verdict in favor of the petitioner in the sum of $4000.00. Respondent thereafter filed its motion for judgment non obstante verdicto which was granted by the Court of Common Pleas and subsequently affirmed by the Supreme Court of Pennsylvania.

Common Pleas Court Opinion.

The opinion of the Court of Common Pleas, reported in 1941 A. M. C. 817 (R. 1-11) holds that there is sufficient precedent to sustain petitioner's claims in the admiralty courts. However, the seaman loses his advantage as a "ward of the court" when he brings his suit in any forum other than in the Admiralty Court. Under the law of Pennsylvania the evidence necessary to set aside the release must be "clear, precise and indubitable" before it will be submitted to the jury. The Court holds that since the petitioner had sought the remedy in the State Court he was bound by the law of Pennsylvania, and accordingly, since the Court found that the evidence did not measure up to the Pennsylvania standard, the motion for judgment non obstante verdicto was granted (R. 11). Respondent's motion for a new trial was denied.

The Opinion of the Supreme Court of Pennsylvania.

The opinion of the Supreme Court of Pennsylvania is reported in 344 Pa. 69. It holds that the quantum and quality of proof necessary to set aside the release is a question of evidence and trial procedure which must be determined by the laws of Pennsylvania. Applying the law "clear, precise and indubitable" the Court affirmed the judgment of the Court of Common Pleas in granting motion for judgment non obstante verdicto.

IV.

Specifications of Error.

The Supreme Court of Pennsylvania erred in the following respects:

1. In holding that the kind and amount of evidence necessary to raise a jury issue against the validity of the sea-

man's release is merely a rule of evidence or trial procedure, governed by the law of Pennsylvania.

2. In holding that the evidence against the validity of the release was not sufficient to raise a jury issue, not being clear, precise and indubitable.

3. In affirming the judgment non obstante verdicto, because:

(a) The petitioner produced substantial evidence against the validity of the release;

(b) The amount and character of evidence in a maritime cause of action sufficient to justify submission of the case to the jury is not to be determined by the local state law, but by the maritime law as applied by the Federal Courts—a jury's verdict should not be set aside where the plaintiff's case is supported by subtantial evidence;

(c) The credibility of the witnesses and the weight of the evidence was for the jury;

(d) Under the maritime law as applied by the Federal Courts, it was the defendant's burden to sustain the validity of the seaman's release.

V.

ARGUMENT.

Summary of Argument.

The petitioner makes the following contentions:

1. Where the cause of action arises under the Maritime Law, that law governs all matters of substance to the exclusion of the state law even though the suit is brought in the state Court.

2. The amount and character of evidence sufficient to raise a jury issue against the validity of the seaman's release is so bound together with the seaman's cause of action that it becomes a matter of substance, necessarily governed by the maritime law.

3. Under the maritime law, seamen's releases are never conclusive, but are carefully scrutinized by the Courts, the burden being upon the party asserting it, to sustain the release as fairly made with and fully comprehended by the seaman, after a full disclosure of all the facts, and without overreaching.

4. The petitioner produced substantial evidence against the validity of the release, sufficient under the Federal law to raise a jury issue and to sustain a verdict in his favor.

First Point.

Where the Cause of Action Arises Under the Maritime Law, That Law Governs All Matters of Substance to the Exclusion of the State Law, Even Though the Suit Is Brought in the State Court.

Under the laws of the United States, a right sanctioned by the Maritime law may be enforced through any appropriate remedy recognized by the common law, but the rights and liabilities of the parties are measured by the standards of the Maritime law and not by the common law. No state law is valid if it works material prejudice to the characteristic features of the general Maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations. *Chelentis* v. *Luckenbach S. S. Co.*, 247 U. S. 372, 62 L. Ed. 1171; *Carlisle Packing Co.* v. *Sandanger*, 259 U. S. 255, 66 L. Ed. 927.

In its consideration of the problem at hand, the Pennsylvania Supreme Court drew some of its authorities from the field of conflict of laws. While some of the principles drawn from that field may not be inconsistent with the contentions which we urge, we submit, nevertheless, that where the suit is brought in a State Court but based upon a Federal law, there can be no question of conflicts, in the precise legal meaning of that term. The state Court does not apply the Federal law as a matter of comity, but it is compelled to do so as a matter of constitutional necessity. The authority of the United States Government is supreme in its cognizance of all subjects which the constitution has committed to it. *Uravic* v. *Jarka Co.*, 282 U. S. 234, 75 L. Ed. 312: Consequently there can be no conflict of authority, in the sense here given to the term, between a state and a law of the United States in respect of such a matter, the former being always subordinate and the latter paramount. *Florida* v. *Mellon*, 273 U. S. 12, 71 L. Ed. 511; *Gelston* v. *Hoyt*, 3 Wheat. (U. S.) 246, 4 L. Ed. 381.

Nor can any law of the United States be evaded by forms of local practice. *American R. Exp. Co.* v. *Levee*, 263 U. S. 19, 68 L. Ed. 140; *Davis* v. *Wechsler*, 263 U. S. 22, 68 L. Ed. 143.

In the case at bar the Pennsylvania Supreme Court stated that "a state may not require a plaintiff to prove as part of his cause of action under Federal law, more than what constitutes the cause of action as defined by that law" (R. 17). The Court goes on to hold that all matters relating to the quantum and quality of proof and all matters relating to the rules of evidence are rules of procedure and are controlled by the law of the forum (R. 18). In this latter holding, we think the Court below erred as will appear in the following point.

Second Point.

The Amount and Character of Evidence Sufficient to Raise a Jury Issue Against the Validity of the Release Is so Bound Together with the Seaman's Cause of Action that it Becomes a Matter of Substance, Necessarily Governed by the Maritime Law as Applied in the Federal Courts.

The Supreme Court of Pennsylvania held, in effect, that while it is the duty of the state Court, in a seaman's action, to apply the Federal law creating the right of action, that duty does not extend to the question of the sufficiency of the evidence to raise a jury issue against the validity of a release, where such release is interposed as a defense. That, holds the Court, is merely a rule of evidence or trial procedure, to be governed by the law of Pennsylvania, the application of which does not deprive the seaman of any substantive rights under the Maritime law.

The effect of this ruling is to deprive the seaman of his traditional status as a "ward of the admiralty", when he steps out of the admiralty Courts and attempts to enforce his rights through the medium of a common law remedy in a state forum. The consequence of such ruling is that whereas, under the maritime law, the burden of establishing the validity of the release, and the consequent destruction of the seaman's case, is upon the party asserting it, when the seaman proceeds through the Pennsylvania Courts, he may set aside the release only upon evidence which is "clear, precise and indutiable". In the former, the seaman establishes a jury case with no more than substantial evidence against the validity of the release. In the latter, the effect is not only to throw the burden on the seaman, but to make that burden infinitely greater by the nature of the evidence required by the rule. To say that under these circumstances the seaman is deprived of no substantive rights under the federal law is to change the

concept of substantive rights beyond the point of recognition. The question at issue involves not merely a matter of procedure as to the time when and the order in which evidence is to be submitted (*Central Vermont R. Co.* v. *White*, 238 U. S. 507, 59 L. Ed. 1433) but the legal effect of the evidence submitted, upon the seaman's right of recovery.

This Court has held that where a state Court has given to certain evidence the effect of defeating a Federal right, it will exercise its power to examine the evidence, and will reverse where such effect is not warranted under the Federal law:

Schlemmer v. *Buffalo, R. & P. R. Co.*, 205 U. S. 1, 51 L. Ed. 681;

Mackay v. *Dillon*, 4 Howard 421, 11 L. Ed. 1038.

The proposition that the question at issue here involves a matter of substance governed by the Federal law, is firmly established by those decisions of this Court which hold that whether or not the evidence in a case involving a Federal right is sufficient to raise a jury issue, is a Federal question reviewable by this Court:

St. Louis, I. M. & S. R. Co. v. *McWhirter*, 229 U. S. 265, 57 L. Ed. 1179;

Chicago, G. W. R. Co. v. *Rambo*, 298 U. S. 99, 80 L. Ed. 1066;

Atlantic Coast Line R. Co. v. *Davis*, 279 U. S. 34, 35, 73 L. Ed. 601, 602;

Atlantic Coast Line R. Co. v. *Driggers*, 279 U. S. 787, 73 L. Ed. 957;

Gulf, M. & N. R. Co. v. *Wells*, 275 U. S. 455, 72 L. Ed. 370;

Chesapeake & Ohio R. Co. v. *DeAtley*, 241 U. S. 310, 60 L. Ed. 1016, 1021.

Nor does the term "rule of evidence" applied by the Supreme Court of Pennsylvania to the process of measuring the quantum and quality of proof necessary to guide the judge in determining whether an issue of fact for the jury has been presented, change the quality of such process from a rule of substance to a rule of local procedure—the kind or amount of evidence required to establish a federal right is not subject to the control of the several states: *Armit* v. *Loveland*, 115 F. (2d) 308, 313. In *Chicago & St. Paul R. R. Co.* v. *Coogan*, 271 U. S. 472, 474, 70 L. Ed. 1041, this Court said, at page 1043-1044 (L. Ed.):

> "By the Federal Employers' Liability Act, Congress took possession of the field of employers' liability to employees in interstate transportation by rail; and all state laws upon that subject were superseded. (Citing cases.) The rights and obligations of the petitioner depend upon that act and applicable principles of common law as interpreted by the Federal Courts. The employer is liable for injury or death resulting in whole or in part from the negligence specified in the act; and proof of such negligence is essential to recovery. *The kind or amount of evidence required to establish it is not subject to the control of the several states.*" (Italics ours.)

We have argued that the problem at bar is not one of conflicts since the Federal law is paramount. We note in passing however that even in the field of conflict of laws, the Court will apply the law of the place where the cause of action arose, where the remedial and substantive portions of the foreign law are so bound together that the usual procedural law of the forum would seriously alter the effect of the operative facts under the law of the appropriate foreign state. A. L. I. Restatement on Conflict of Laws Section 595; *Lykes Bros. S. S. Co.* v. *Esteves*, 89 F. (2d) 528.

When the burden of proof is concerned with the time when and the order in which evidence is to be submitted it is generally considered to be a matter of procedure, and when it does not interfere with the substantive features of the cause of action, the law of the forum is applicable. On the other hand, where the burden of proof involves the quantum and quality of the evidence already submitted it necessarily affects the substantive rights of the parties and must be considered as a matter of substance not subject to the control of the several states. It is particularly so where the cause of action is based upon some Federal right or law. In *Central Vermont R. Co.* v. *White* (*supra*), the decedent, an employee of the railroad, was killed in a collision and suit was brought under the Federal Act in a state court. Under the state law plaintiff was required not only to prove the negligence of the defendant, but also to show that he himself was free from contributory negligence. The United States courts have uniformly held that as a matter of general law the burden of proving contributory negligence is on the defendant. Error was assigned to the refusal of the Court to apply the state rule concerning the burden of proof. This Court affirmed the judgment of the Court below upon the ground that the burden of proof in connection with the issue before the Court was a matter of substance and was required to be applied in accordance with the Federal law. Said the Court (L. Ed. pages 1436-1437):

> "There can, of course, be no doubt of the general principle that matters respecting the remedy—such as form of the action, sufficiency of the pleadings, rules of evidence, and the statute of limitations—depend upon the law of the place where the suit is brought (M'Niel *v.* Holbrook, 12 Pet. 89, 9 L. Ed. 1011). But matters of substance and procedure must not be confounded because they happen to have the same name.

* * * So, too, as to the burden of proof. As long as the question involves a mere matter of procedure as to the time when and the order in which evidence should be submitted the State Courts can, in those and similar instances, follow their own practice even in the trial of suits arising under the federal law.

"But it is a misnomer to say that the question as to the burden of proof as to contributory negligence is a mere matter of state procedure. For, in Vermont, and in a few other states, proof of plaintiff's freedom from fault is a part of the very substance of his case. He must not only satisfy the jury (1) that he was injured by the negligence of the defendant, but he must go further, and, as a condition of his right to recover, must also show (2) that he was not guilty of contributory negligence. In those states the plaintiff is as much under the necessity of proving one of these facts as the other; and as to neither can it be said that the burden is imposed by a rule of procedure, since it arises out of the general obligation imposed upon every plaintiff, to establish all of the facts necessary to make out his cause of action. * * * Congress, in passing the Federal employers' liability act, evidently intended that the Federal statute should be construed in the light of these and other decisions of the Federal Courts. Such construction of the statute was, in effect, approved in Seaboard Air Line R. Co. *v.* Moore, 228 U. S. 434, 57 L. Ed. 907, 33 Sup. Ct. Rep. 580. There was, therefore, no error in failing to enforce what the defendant calls the Vermont rule of procedure as to the burden of proof."

In *New Orleans & N. E. R. Co,* v. *Harris,* 247 U. S. 367, 62 L. Ed. 1167, an employee of the railroad was injured in the course of his employment and died shortly thereafter. Suit was brought by his mother, as administratrix, under the Federal Employers' Liability Act in a State Court of Mississippi. The judgment in her favor was affirmed by the State Supreme Court. The trial Judge charged the jury in accordance with the so-called "Prima Facie Act"

of Mississippi, which provides that in actions against railroads for damages, proof of injury inflicted by an engine shall be *prima facie* evidence of negligence. Under the Federal law proof of negligence is necessary. This Court held that the proceedings, although brought in a State Court, were governed by the Federal law. Said the court (L. Ed. page 1171):

> "In proceedings brought under the Federal Employers' Liability Act rights and obligations depend upon it and applicable principles of common law *as interpreted and applied in Federal Courts;* and negligence is essential to recovery. (Cases cited.) These established principles and our holding in Central Vermont R. Co. *v.* White, 238 U. S. 507, 511, 512, 59 L. Ed. 1433, 1436, 1437, 35 Sup. Ct. Rep. 865, Ann. Cas. 1916 B, 252 9 N. C. C. A. 265, we think make it clear that the question of burden of proof is a matter of substance, and not subject to control by laws of the several states." (Italics ours.)

Furthermore, a Federal right may not be denied under the guise of the application of a state "rule of evidence". *Great Northern R. Co.* v. *Washington,* 300 U. S. 154, 81 L. Ed. 573.

Nor can a substantive right or defense arising under Federal law be lessened or destroyed by a local rule of practice. In *American Railway Express Co.* v. *Levee,* 263 U. S. 19, 68 L. Ed. 140, suit was brought in a state Court to recover the actual value of property lost in transit by the railroad. A receipt given by the company contained a clause limiting the value of the personal property to $50.00. The state Court in Louisiana applied the law of that state and held that the burden was on the carrier to prove that the loss or damage had been occasioned by accident or uncontrollable events and gave the plaintiff judgment. This Court reversed upon the ground that the limitation of

the receipt was a valid one under the Federal law, which was controlling. Said the Court (L. Ed. p. 143):

> "The law of the United States cannot be evaded by the forms of local practice. * * * The local rule applied as to the burden of proof narrowed the protection that the defendant had secured, and therefore contravened the law."

In *Davis* v. *Wechsler*, 263 U. S. 22, 68 L. Ed. 143, a suit for personal injuries sustained by plaintiff upon the lines of the defendant railroad was brought in the state Court in Missouri. By General Order, suits against carriers, while under Federal control, were required to be brought either in the county of plaintiff's residence or in the county where the cause of action arose. The Director General of Railroads entered an appearance and united a plea to the jurisdiction with a defense of the merits. The state Court held that under the law of Missouri the appearance by defendant waived objection to the venue notwithstanding the General Order. This Court reversing the judgment stated (L. Ed. Page 145):

> "We are of opinion that the judgment must be reversed. Whatever springs the state may set for those who are endeavoring to assert rights that the state confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice. Even if the order went only to the venue, and not to the jurisdiction of the Court, each Director General in turn plainly indicated that he meant to adopt the position of his predecessor, and to insist that the suit was brought in the wrong county. His lawful insistence cannot be evaded by attempting a distinction between his appearance and his substantially contemporaneous adoption of the plea. Indeed, when the law requires him to unite his defense on the merits, which imports an appearance pro hac vice, with his preliminary plea, it is hard to understand how any effect could be attributed to the statement that he

appeared. *The state Courts may deal with that as they think proper in local matters, but they cannot treat it as defeating a plain assertion of Federal right.* The principle is general and necessary. Ward v. Love County, 253 U. S. 17, 22, 64 L. Ed. 751, 758, 40 Sup. Ct. Rep. 419. *If the Constitution and laws of the United States are to be enforced, this Court cannot accept as final the decision of the state tribunal as to what are the facts alleged to give rise to the right or to bar the assertion of it even upon local grounds.* Creswill v. Grand Lodge, K. P. 225 U. S. 246, 56 L. Ed. 1074, 32 Sup. Ct. Rep. 822. This is familiar as to the substantive law, and for the same reasons it is necessary to see that local practice shall not be allowed to put unreasonable obstacles in the way. See American R. Exp. Co. v. Levee, decided this day (263 U. S. 19, ante, 140, 44 Sup. Ct. Rep. 11)". (Italics ours.)

We are concerned here with rights arising out of the maritime law, asserted by a seaman in a state forum. The laws concerning the maritime rights of this class of men can only originate in the maritime law. No state can make any law, either by legislation or by judicial decision, substantially affecting these rights. Under this principle, the kind or amount of evidence required to establish such rights is not subject to the control of the several states. It must necessarily follow that the kind or amount of evidence necessary to defeat such rights is likewise not subject to the control of the states.

The effect of a valid release upon a seaman's action is identical with the effect of assumption of risk upon a railway employee's action under the Federal Employer's Liability Act. Both operate as a complete defense. If the kind and amount of evidence necessary to establish a jury issue respecting the defense of assumption of risk is a Federal question, to be determined according to the Federal law (*Chesapeake & Ohio R. Co.* v. *DeAtley*, 241 U. S. 310, 60 L. Ed. 1016, 1021) no sound reasoning can

lead to the conclusion that the amount and character of evidence necessary to raise a jury issue, concerning the defense of a release to a seaman's action, is a mere matter of trial procedure to be governed by the local law.

Under the ruling of the Pennsylvania Supreme Court, the respondent's defense is enlarged and the seaman's correlative rights are of necessity lessened. Were the law of Pennsylvania such as to constitute a release a complete bar to an action, no matter what the evidence against its validity, the Supreme Court of Pennsylvania could, under the rationale of its decision, completely destroy a Federal right under the guise of a local "rule of evidence."

We are dealing here with a distinct class of people, who have received special protection from the United States Courts and Congress. The usefulness of this group is not local in character, but decidedly national in its scope. The laws respecting these men, therefore, must of necessity follow them wherever their occupation may lead. To allow a state Court under the guise of a local rule of evidence to accomplish indirectly what it is forbidden to do directly would be to circumvent the established rule which prevents any state from substituting its own laws for that of the Maritime law. The effect is to permit the state law to alter the characteristic features of the Maritime law and to destroy its uniformity of application.

We submit that whether the matter involved be "burden of proof" or some "rule of evidence", if, in fact, the substantive rights of the seaman are involved, then it is mandatory on the court enforcing the remedy to apply the Maritime law.

Third Point.

Under the Maritime Law, Seamen's Releases Are Never Conclusive, But Are Carefully Scrutinized By the Courts, the Burden Being Upon the Party Asserting It, To Sus-

tain the Release As Fairly Made With and Fully Comprehended By the Seaman, After a Full Disclosure of All the Facts, and Without Overreaching.

Under the Maritime law the relationship of the Master to the Seaman has been compared with that of guardians to their wards and trustees to their cestuis que trustent. *Bonici* v. *Standard Oil Company of N. J.*, 103 F. (2d) 437. Accordingly, a seaman's release must be carefully scrutinized to determine whether there has been any overreaching and whether the release was obtained fairly, without fraud and with full disclosure of all the facts involved. Contrary to the general rule regarding the setting aside of releases, the burden, under the maritime law, to prove the validity of the release is upon the shipowner. *Bonici* v. *Standard Oil Company of N. J. supra; Sitchon* v. *American Export Lines*, 113 F. (2d) 830; *Hume* v. *Moore-McCormack Lines*, 121 F. (2d) 336.

Under the rule of the admiralty therefore, it is indisputable that the facts in the case at bar presented a question for the jury. The Common Pleas Court below concedes that under the maritime law it would have been required to sustain the verdict instead of granting the judgment n.o.v. (R. 330a).

The Maritime law concerning the validity of seamen's releases is thoroughly treated by the United States Circuit Court of Appeals in the recent case of *Bonici* v. *Standard Oil Co. of N. J.*, 103 F. (2d) 437. In that case it was conceded by all parties that the seaman signed a general release of all claims. The release contained in large red and black type statements that "signing this paper settles, and ends every claim for damages as well as for maintenance and cure and wages." The libellant, the court found, was a person of some education, able to read and write and the

court held and counsel conceded that he knew he was signing a general release. He testified, however, that he did so because the doctor for the respondent told him that there was nothing the matter with his arm and that he would be ready for work in five or ten days. It subsequently developed that the seaman required four months additional care before he could return to work. In affirming the decree of the court below, the court held that while seamen's releases are not wholly invalid, they are jealously scrutinized to see that there has been no overreaching; that one who claims that a seaman has signed away his rights to what in law is due him must be prepared to take the burden of sustaining the release as fairly made with and fully comprehended by the seaman. In reaching this conclusion the court considered the background and circumstances surrounding the occupation of this class of employees as follows (P. 438-439):

> "We think the rule to be applied is that which apparently prevails generally as to seamen's releases in admiralty, namely, that such releases are not wholly invalid, but are jealously scrutinized to see that these 'wards of the admiralty' have not been overreached. The tender consideration of admiralty for these 'favorites' of the Court who are 'a class of persons remarkable for their rashness, thoughtlessness, and improvidence' (Story J., in Brown *v.* Lull, C. C. 4 Fed. Cas. 407, 409, No. 2018) has been emphasized once again in the recent case of Socony Vacuum Oil Co. *v.* Smith, 305 U. S. 424, 59 S. Ct. 262, 83 L. Ed. —, affirming 2 Cir., 96 F. (2d) 98, in holding the common law doctrine of assumption of risk not a defense to a seaman's action for personal injury. See also Calmar Steamship Corp. *v.* Taylor, supra; Cortes *v.* Baltimore Insular Line, 287 U. S. 367, 377, 53 S. Ct. 173, 77 L. Ed. 368; The Osceola, 189 U. S. 158, 23 S. Ct. 483, 47 L. Ed. 760. A classic statement of the rule appears in Mr. Justice Story's opinion in Harden *v.* Gordon, C. C., 11 Fed. Cas. 480 No. 6047, at page 485, where

he states that, while seamen are 'not technically incapable of entering into a valid contract, they are treated in the same manner, as courts of equity are accustomed to treat young heirs, dealing with their expectancies, wards with their guardians, and cestuis que trust with their trustees.' And there he held invalid a stipulation limiting the shipowner's responsibility for medicines and medical care to that furnished by the medicine chest on board ship.

"*Hence,* * * * *'One who claims that a seaman has signed away his rights to what in law is due him must be prepared to take the burden of sustaining the release as fairly made with and fully comprehended by the seaman'* * * *". (Italics ours.)

Certiorari was denied in 60 Sup. Ct. 106. A petition for rehearing was likewise denied, in 60 Sup. Ct. 137.

In *Sitchon* v. *American Export Lines*, 113 F. (2d) 830, the same rule was affirmed. It was contended in that case that the law of New Jersey was applicable and in this connection the Circuit Court of Appeals said (p. 833):

"The law of New Jersey is apparently in accord with the result we have reached, though that fact is really unimportant, where the question is one affecting the rights of a seaman under the maritime law. That question is one which the United States Courts have to answer."

The latest case on the subject is that of *Hume* v. *Moore-McCormack Lines*, (*supra*). In reaffirming the decision in *Bonici* v. *Standard Oil*, (*supra*) the court makes an admirable and pertinent analysis of the background for the rule governing seamen's releases. To begin with the court compares the unequal position of the shipowner with that of the seaman as follows (p. 341):

"'On the one side are gentlemen possessed of wealth, and intent, I mean not unfairly, upon augmenting it, conversant in business, and possessing the means

of calling in the aid of practical and professional knowledge. On the other side is a set of men, generally ignorant and illiterate, notoriously and proverbially reckless and improvident, ill provided with the means of obtaining useful information, and almost ready to sign any instrument that may be proposed to them; and on all accounts requiring protection, even against themselves. Everybody must see where the advantages must lie between parties standing upon such unequal ground, and accordingly these special engagements so introduced into the mariners' contract lean one way, to the disadvantage of the mariners, and to the advantage of their employers, by increasing the duties of the former, and diminishing the obligations of the latter.' "

The court also notes at page 345:

"* * * we should note an intensely practical influence (especially meaningful for us today) sharply manifesting itself in the early 19th century admiralty decisions relating to seamen, which may give us the answer to our question: there is an explicit recognition of the importance of sea-power as an agency of commerce and of national defense."

Finally, considering that this was an action at law, the court again makes note of these "wards of the admiralty" and the special consideration awarded to them (pp. 346, 347):

"At any rate it is permissible to say that the promotion of national defense was one of the important reasons—and one surely pertinent today—which led to the perpetuation of this rule: The liberty of the individual employee to bind himself firmly—absent fraud, coercion or the like—in a contract with his employer, no matter how harsh or unusual its terms, is not to be strictly applied to workers who go to sea. As to such provisions in their contracts, because they are 'wards of admiralty' a distinctive doctrine is applicable; a peculiar burden is cast on the employer.

"The legislative policy has been to extend that unique protection; in order to effectuate the Congressional intention, statutes of that type have been liberally construed to favor the seaman (Bainbridge *v.* Merchants' & Miners' Transp. Co., 287 U. S. 278, 53 S. Ct. 159, 77 L. Ed. 302), who has been called the 'ward of the legislature'. That the legislative policy, in turn, should perhaps affect the judicial attitude, even as to matters not completely within the boundaries of a statute, was suggested by Mr. Justice Holmes, On Circuit, in Johnson *v.* United States, 1 Cir., 163 F. 30, 32, 18 L. R. A., N. S., 1194 (1908), recently cited and quoted with approval in Keifer & Keifer *v.* Reconstruction F. Corp., 306 U. S. 381, 391, note 4, 59 S. Ct. 516, 83 L. Ed. 784, 1939.

"This Court has consistently followed the rule as to protection of seamen as interpreted in our decisions above cited. We shall do so here. On the record now before us, the instant case lacks the differentiating circumstances we found in Sitchon *v.* American Lines, Supra, and sufficiently resembles the facts in Bonici *v.* Standard Oil Co., supra, so that it should not have been decided against appellant on the facts as presented on the motion for summary judgment. Here the seaman had no lawyer nor other competent adviser representing him when he signed the release. *There should be a trial of the issues, on evidence, at which the burden will be on the appellee to sustain the release 'as fairly made with and fully comprehended by the seaman'.* (Harmon *v.* United States, 5 Cir., 59 F. (2d) 372, 373; Bonici *v.* Standard Oil Co., supra.)" (Italics ours.)

By its decision, the Supreme Court of Pennsylvania gave implied sanction to a propostion, advanced by the trial court (R. 330a), thoroughly opposed to the purposes of the Maritime law, namely, that a seaman is a ward of the admiralty only when he asserts his rights through the admiralty courts. That the Federal courts do not countenance any such proposition is amply demonstrated by the

cases of *Sitchon* v. *American Export Lines, supra,* and *Hume* v. *Moore-McCormack Lines, supra,* both of which were actions at law; in the latter case, the seaman was considered not only a ward of the court, but a ward of the legislature as well. It seems obvious to us that the seaman must be considered in the same light in whatever court he chooses to enforce his Maritime rights. His relationship and usefulness to the national economy do not depend upon the court in which he elects to proceed, and his status accordingly must remain consistent in both State and Federal forum.

In discussing the burden of proof under the Maritime law the Pennsylvania Supreme Court implies that there is a conflict of opinion between the various Circuits, particularly referring to the Second and Third Circuits. This is, of course, an erroneous view. An analysis of the decisions shows complete harmony in all the Circuits where the question has been raised. In the case of *Harmon* v. *U. S.* 59 F. (2d) 372, the Circuit Court of Appeals for the Fifth Circuit specifically held that the burden of proof is upon the employer to sustain the validity of the release. The Pennsylvania Supreme Court apparently relies on the decision in the "Adonis" (C. C. A. 3) 38 F. (2d) 743, for its implication of a conflict. We call to the Court's attention the fact that in that case the suit was brought in the admiralty and the facts accordingly were found by the Judge, rather than by a jury. The law as applied to the facts is entirely consistent with the law announced in the other Circuits. Lest there be any doubt concerning the rule in the 3rd Circuit, we refer to the later case of *Deemer* v. *United Fruit Co.*, 1937 A. M. C. 286, wherein Judge Maris, who is presently on the Circuit Court of Appeals for the Third Circuit, then sitting as District Judge said (p. 287):

> "• • • one who sets up a seaman's release has the burden of sustaining it as fairly made with and fully comprehended by the seaman".

It is thus obvious that the rule is the same in the Third Circuit notwithstanding the implication of the court below.

We note, finally, that portion of the opinion of the Supreme Court of Pennsylvania wherein the court compares the subjective process by which a judge sitting in admiralty arrives at the ultimate fact—the effect to be given to a release—and the process by which a judge presiding at law would reach or permit the result to be reached by a jury. There is, says the court, no substantial difference between the two processes (R. 20). The point is important because it appears to have served as one of the theoretical foundations for the court's ultimate conclusion.

We submit that the view of the court below is clearly erroneous. In admiralty, the Trial Court performs two separate and distinct functions, and this it must do under General Admiralty Rule No. 46½. It must first find the facts specially, and must then state separately its conclusions of law thereon. In performing the first function noted above, the Admiralty Court proceeds by a subjective process identical in every respect with the process by which a *jury* arrives at the facts. In performing the second function, the Admiralty Court proceeds exactly as a *judge* presiding over a jury. Whether, therefore, the case be tried in Admiralty, or at law before a judge and jury, becomes important in considering the nature of the subjective process by which a judge permits a given result to be reached. At law, the function of the judge is limited to determining whether or not, as a matter of law, there is sufficient evidence in kind and quality for submission to the finders of fact, the *jury*. In Admiralty, the court performs this function in the same manner in the first instance, and, if it determines that there is sufficient evidence, then submits it to the finder of fact, the *Court* itself, for determination of the ultimate fact. Therefore, to say that a judge at law and a judge in admiralty proceed by the same subjective process in arriving at the ultimate fact—the effect

to be given a release—is clearly erroneous, since the Judge at law is concerned only with questions of law, and not with questions of fact. He performs no function which is the counterpart of the process by which a Court of Admiralty arrives at the ultimate fact, having once determined that the evidence is sufficient for submission to factual scrutiny, and determination. These considerations, we believe, resolve the apparent conflict which seems to exist in some of the Federal Circuits, where opposite results were reached through application of the same legal principles.

Fourth Point.

The Petitioner Produced Substantial Evidence Against the Validity of the Release, Sufficient Under the Maritime Law to Raise a Jury Issue and to Sustain a Verdict In His Favor.

The petitioner's testimony showed that he had taken about one-half dozen veronal pills, the night before, and several more the following morning, prior to the time he signed the release. In addition, at the time he signed it he was intoxicated. Prior to signing the release he had made several demands for wages owed him to the end of the voyage, and the moneys which he received were accepted in payment of these wages. At the time he received the final sum of Seventy-Two Dollars, he was threatened with arrest unless he signed the paper in question. He did not know that he was signing, nor did he intend to sign, a release of all claims for damages. The release which is asserted as a full defense to petitioner's claim purports to release for $100.00 a claim which a jury of twelve men have adjudged to be valued at $4000.00.

There was substantial evidence here of gross over-reaching, of fraud, and of circumstances showing that the re-

lease was not fairly made with and fully comprehended by the seaman. Under the principles announced hereinbefore such evidence was clearly sufficient to raise a jury issue and to support a verdict in favor of the petitioner.

The Supreme Court, at the end of its opinion, stated that if it had concluded that judgment should be reversed on the plaintiff's appeal, it would not have directed the judgment to be entered on the verdict, but would have been required, by its consideration of the evidence, to have reinstated defendant's motion for a new trial (R. 21).

We submit that under the principles announced by this Court the jury's verdict should not be disturbed. In *Western and Atlantic Railroad Co.* v. *Hughes*, 278 U. S. 496, 73 L. Ed. 473, this Court specifically held that the weight of the evidence and the credibility of the witnesses were for the jury, even though it did not seem persuasive to the court. Said the court (L. Ed. page 475):

> "Some of the testimony given by witnesses for the railroad would, if believed, have entitled it to the verdict as a matter of law. Some of the testimony given by witnesses called by the plaintiff does not seem to us persuasive. But the credibility of the witnesses and the weight of the evidence were obviously matters for the jury. The defendant was not entitled to a directed verdict."

To permit the Supreme Court of Pennsylvania to send this case back for new trial would be in effect to prevent this petitioner from ever vindicating his maritime rights. For the evidence to sustain them on any subsequent trial must be substantially the same as it was on the first trial. Consequently, the Supreme Court of Pennsylvania could send the case back for retrial *ad infinitum*, and thus effectively deprive petitioner of his right to a trial by jury.

Conclusion.

The Supreme Court of Pennsylvania has rendered a decision upon a Federal question of substance in conflict with established decisions of this Court and of numerous Circuit Courts of Appeal. The decision would alter the characteristic features of the maritime law and would destroy its uniformity of application.

WHEREFORE, it is respectfully submitted that the judgment of the court below should be reversed and the verdict reinstated.

Respectfully submitted,

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(1974)

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IN THE

Supreme Court of the United States

October Term, 1942.

No. 67.

WADE GARRETT,

Petitioner,

v.

MOORE-McCORMACK COMPANY, INC. and AMERICAN SCANTIC LINE.

REPLY BRIEF ON BEHALF OF PETITIONER ON WRIT OF CERTIORARI.

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REPLY BRIEF ON BEHALF OF PETITIONER ON WRIT OF CERTIORARI.

Respondents have advanced several arguments which require brief reply.

Before considering those matters, we desire to correct an erroneous statement in our brief. On page 5, we stated that, in the course of the trial, respondents attempted to show by a certain X-Ray plate that petitioner had the same fractures in the transverse processes of the back about three years before the accident in question. The erroneous statement was that we thereupon offered the record of the hospital where the earlier X-Ray had been taken. This is not supported by the record and we therefore respectfully offer our apologies and request this Court to disregard it. We note in passing however, that the inferences drawn in this connection remain unaffected by this deletion. The fact remains that the record from which the X-Ray plate was taken, was in court (R. 146a), but respondents did not offer the X-Ray report in evidence; significantly, the envelope from which the plate was taken showed that the findings were negative (R. 181a).

Proceeding now to the consideration of the legal questions raised by respondents, we note first the argument that where the seaman brings his suit in a State Court for injuries sustained on shipboard, he is governed by the common law of the State or forum of his selection. In support of this proposition, respondents rely upon article 3, section 2 of the Constitution, which provides that the judicial power of the United States shall extend to all cases of Admiralty and Maritime jurisdiction, and upon the Act of Congress, June 10, 1922, C. 216, Sec. 2; 28 U. S. C. A. sec. 371. This act vests exclusive jurisdiction in the Federal Courts of all civil causes of Admiralty and Maritime jurisdiction "*sav-*

ing to suitors in all cases the right of a common law remedy where the common law is competent to give it."

It may be noted at the outset that in making this argument, respondents completely reverse their former position in this case. In the course of the argument before the Pennsylvania Supreme Court respondents stated (Appellee's Brief, p. 9):

> "It is conceded that the plaintiff had the right to bring his action in the State Court. And it is further conceded that if the plaintiff had not executed a release it would have been proper to submit his case to the jury to pass upon the question of whether the circumstances of the alleged accident were such as to render the shipowner liable and of the period of time during which the plaintiff was entitled to maintenance and cure. *It is obvious that these questions would have to be determined in accordance with the Maritime Law."* (Emphasis ours)

Respondents now take an entirely different view and repudiate their former position as follows: (Respondents' brief p. 16):

> ". . . as to seamen we have an express direction from the constitution and from Congress through the Judiciary Act, forbidding the several states to apply admiralty rules because jurisdiction is given exclusively to Federal Courts."

An analysis of respondents' own brief clearly discloses the soundness of their first view and the error into which they have now fallen. Respondents brush aside the numerous cases cited by petitioner with patently unsound distinctions and rely upon two cases, neither of which is authority for their present view.

In *Moses Taylor v. Hammons*, 71 U. S. 411, 4 Wall. 411, one of the two cases cited by respondents, a suit *in rem* was

instituted in the State Court under a California State Statute, which provided for actions *in rem* against vessels. This court denied the right of any State to make any law, relating to Maritime proceedings *in rem*, holding that since a *rem* proceeding was statutory, having its origin in the civil law and not in the common law, it did not come within the saving clause of the judiciary act. Nowhere in the opinion does the court state or imply as respondents urge, that the State Court is forbidden to apply the Admiralty law where the common law affords a remedy. In fact this court said quite the opposite and pointed out that the exclusive jurisdiction of the Federal Courts pertained only to those cases where there was no common law remedy, as for example an attachment or *rem* proceeding. This case clearly supports petitioner's view. The case at bar involves a common law remedy in the State court and not a *rem* proceeding. What the respondents have done is to read the judiciary act without any regard for the meaning of the "saving" clause.

Respondents' whole argument is based upon the premise, that it is a remedy at the common law which is saved by the judiciary act rather than a common law remedy. This premise is diametrically opposed to what your Honorable Court has many times construed the "saving" clause to mean. Respondents state (brief 12) that the meaning of the saving clause is clearly demonstrated in *Belden v. Chase* (1893) 150 U. S. 674, 37 L. ed. 1218, 14 Sup. Ct. Rep. 264. We respectfully note that nowhere in the opinion of that case is the "saving" clause referred to, nor does the court attempt to construe that clause or to distinguish between a remedy at the common law and a common law remedy. *Belden v. Chase* holds that where the cause is brought in admiralty the comparative negligence rule is applicable, but if the suit it brought at common law then the common

law rule of contributory negligence applies. This is a clear example of the error caused by failing to recognize the distinction between a common law remedy and a remedy at the common law. The distinction was most clearly set forth by this court in *Chelentis v. Luckenbach*, 247 U. S. 372, 62 L. ed. 1171, which case squarely meets the issue here involved and construes the "saving" clause in the judiciary act referred to by respondents. It leaves no doubt that *Belden v. Chase* is not the law today. Respondents attempt to brush aside the effect of the *Chelentis* case by stating that the construction of the "saving" clause was dictum and should not be considered as authority. A brief recital of the facts proves the contrary. The *Chelentis* case was an action at law for personal injuries sustained by a seaman by reason of the alleged improvident order of the first assistant engineer. The plaintiff claimed the right to recover full indemnity, relying upon two acts of Congress: (1) the Judiciary Act of 1789, 1 Stat. at L. 76, 77, Chapt. 20, giving the district courts exclusive cognizance of causes of admiralty and maritime jurisdiction, "saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it"; and (2) the La Follette Act (March 4, 1915, C. 153, 38 Stat. at L. 1164, 1185), which provided "That in any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow servants with those under their authority." It was contended that the effect of these acts was, first, that where a seaman proceeds by an action at law, the rights and liabilities of the parties are governed by common law principles; and second, that the affirmative defense of injury by fellow servant, so far as it concerned seamen having command, was abolished. This court held that the Judiciary Act saved a common law

remedy, and not a remedy in the common law, as a consequence of which the rights of the seaman must be determined by the maritime law to the exclusion of the common law, and without regard to the court wherein the right is asserted. As to the rights under the maritime law, the court found that liability for indemnity could only arise from an unseaworthy condition of the vessel and there was no such liability resulting from the negligence of the master or any fellow member of the crew. The La Follette Act merely provided that a seaman in command shall not be considered a fellow servant. It did not, said the court, impose upon shipowners the same measure of liability for injuries to seamen, as the common law prescribes for shore employees. In this view the court found that the La Follette Act added nothing to the liability of the owner for indemnity and since the common law rule was not available in a maritime cause of action there could be no recovery for the negligence of a seaman in command even though the right was asserted in a common law court. It is thus obvious that the opinion of the court relating to the "saving" clause was in no sense dictum but absolutely essential to the decision of the case. In construing the "saving" clause the court said:

> "The distinction between rights and remedies is fundamental. A right is a well-founded or acknowledged claim; a remedy is the means employed to enforce a right or redress an injury. Bouvier's Law Dict. Plainly, we think, under the saving clause a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law; but we find nothing therein which reveals an intention to give the complaining party an election to determine whether the defendant's liability shall be measured by common-law standards rather than those of the mari-

time law. Under the circumstances here presented, *without regard to the court where he might ask relief, petitioner's rights were those recognized by the law of the sea.*" (L. Ed. pp. 1176, 1177) (Italics ours)

Reasoning from the foregoing principles this court leaves no doubt that *Belden v. Chase* is no longer the law in regard to the application of the comparative negligence rule where a maritime cause of action is concerned (L. Ed. pp. 1174-1175):

> " 'The contract of a seaman is maritime and has written into it those peculiar features of the maritime law that were considered in the case of The Osceola, 189 U. S. 158, 47 L. ed. 760, 23 Sup. Ct. Rep. 483; and although, because of these peculiarities, such contracts are almost invariably litigated in admiralty courts, *still the contract must be the same in every court, maritime or common law.* The only difference between a proceeding in one court or the other would be that the remedy would be regulated by the lex fori. If a seaman who had been locked up or put in irons for disobedience of orders were to sue the master for damages in a court of common law, he could not recover like a shore servant, such as a cook or chauffeur, who had received the same treatment. *So a seaman bringing suit in a common-law court for personal injuries could recover, even if guilty of contributory negligence, although a shore servant suing in the same court could not;*' " (Emphasis supplied)

It is submitted that the *Chelentis* case completely destroys respondents' argument on this point. Respondents have argued (Brief 14) that the significance of the *Chelentis* case is that the Act of 1915 could not extend in application beyond suits brought in admiralty. It is apparent that they have completely overlooked the basic principles involved in that case.

The leading text writers likewise consider the holding in *Belden v. Chase* as having been long since superseded. *Sprague on Divided Damages* 1928, 6 N. Y. U. L. Rev. 15, states:

> ". . . the rule of divided damage . . . is a part of the right connected with every maritime tort and not a mere procedural remedy, dependent upon the forum, . . . since (Belden v. Chase) the principles of that admiralty law have been more clearly defined and established and Carlisle Packing Co. v. Sandanger, 1922, 259 U. S. 255, 42 S. Ct. 475, 66 L. Ed. 927; Chelentis v. Luckenbach S. S. Co., 1918, 247 U. S. 372, 38 S. Ct. 501, 62 L. Ed. 1171; Southern Pac. Co. v. Jensen, 1917, 244 U. S. 205, 37 S. Ct. 524, 61 L. Ed. 1086; Knickerbocker Ice Co. v. Stewart, 1920, 253 U. S. 149, 40 S. Ct. 438, 64 L. Ed. 834 have been decided. The principles underlying these cases are contrary to the decision in Belden v. Chase and it is suggested, have modified it."

This view is quoted with approval in *Robinson on Admiralty* (P. 862) and in *Benedict on Admiralty*, Sixth Edition, Vol. 1, P. 54, 55.

Moreover this court has in numerous decisions applied the rule which we urge, and which is opposed to the rule of *Belden v. Chase*. Some of the leading and most recent cases on this point are: *The Arizona v. Anelich*, 298 U. S. 110, 80 L. Ed. 1075; *Beadle v. Spencer*, 298 U. S. 124, 80 L. Ed. 1082.

Respondents undertake likewise to distinguish the decision of this court in the case of *Carlisle Packing Co. v. Sandanger*, 259 U. S. 255, 66 L. Ed. 927, 42 Sup. Ct. 475. Here again it is contended that it was unnecessary for the Supreme Court to base its decision on the Admiralty Law, as the Common Law was competent to give the same remedy; that therefore the decision can have no more force than

dicta, and that it is in conflict with the Constitution and the Judiciary Act (R. Brief 15). We submit that in this case as in the others, respondents fail to properly analyze the facts or the law. There the seaman instituted an action in the State Court of Washington against the shipowner, contending that his employer was negligent in filling a can with gasoline which ordinarily contained coal oil and was so labeled, and which was used to start fires in the cook stove. Plaintiff, without knowledge of the substitution, poured the gasoline upon the firewood and when he applied a match an explosion resulted and he was badly burned. The trial court held that the basis of the action was negligence and instructed the jury according to the common law rules in respect thereto, stating that if the seaman was contributorily negligent, he could not recover. A verdict for the plaintiff was affirmed by the Supreme Court of Washington and certiorari was duly granted. This court held that the trial court committed error in applying the common law rule of contributory negligence; that the general maritime law should have been the applicable law to the exclusion of the common law rule. However, since the error was committed in favor of the defendant, the defendant had no ground for complaint. The court made it very clear that the maritime rule of comparative negligence was the proper rule to the exclusion of the common law rule, notwithstanding the suit had been brought in the State Court. Said the Court:

> "The general rules of the maritime law apply whether the proceeding be instituted in an admiralty or common-law court. Chelentis v. Luckenbach S. S. Co. supra; Knickerbocker Ice Co. v. Stewart, 253 U. S. 149, 159, 64 L. Ed. 834, 838, 11 A. L. R. 1145, 40 Sup. Ct. Rep. 438.

"Here the trial court did not instruct the jury in consonance with these rules, and, by failing so to do, fell into error.

"But mere error, without more, is not enough to upset the judgment, if the record discloses that no injury could have resulted therefrom. West v. Camden, 135 U. S. 507, 521, 34 L. ed. 254, 258, 10 Sup. Ct. Rep. 838." (L. Ed. p. 930)

We respectfully submit that the respondents have placed upon the Constitution and the Judiciary Act, an interpretation which finds no support in the authorities and which is in direct conflict with numerous decisions of this court. To permit the State law to be applied to a maritime cause of action could only result in the destruction of the uniform operation of the maritime law, since a suitor, if respondents' contention were the law, could have the benefit of any one of a number of different laws, depending upon his choice of the forum. This court has always most vigorously resisted any attempt to destroy the uniform operation of the maritime law.

Petitioner has set forth in his original brief, certain of his own testimony showing that the release was unfairly obtained and should be set aside. We desire to point out here certain other evidence from respondents' own witness which is sufficient in itself to invalidate the release.

Bearing in mind the duty which the shipowner owes to his seamen, comparable to the relationship of trustee and cestui que trust, and requiring full disclosure and fair dealing, the testimony of claim agent Suessmuth clearly discloses that respondents did not meet the obligation imposed on them by law. Suessmuth had before him the report showing petitioner's injury due to the falling ventilator, and that he was put on light duty before the vessel reached

the first European port (R. 121a). He admitted further that he had the report of Dr. Nielson the company doctor who examined petitioner immediately Garrett came ashore and found an injury to the hand and foot and advised a rest for three days. Confining ourselves to those injuries, it developed that both of these injuries were fractures instead of bruises. This was confirmed by X-Ray in the hospital in Gdynia, Poland, shortly thereafter (R. pp. 283a, 284a). It was also confirmed by the X-Ray of the U. S. Marine Hospital in New York (R. 273a). The claim agent had all of this information before him when he made the settlement (R. 120a). Instead of making a full disclosure and attempting to work out the settlement on some reasonable basis, he completely misrepresented the facts as follows: (R. 106a)

> "Q. How did you arrive at this figure with him?
> A. I didn't arrive at anything, I just told him he didn't have a claim against the company."

This is exactly the sort of conduct against which the courts have sought to protect the seamen. It shows clearly the lack of fairness and candor necessary to the validity of any seaman's release.

It is to be noted that the Trial Court in its opinion en banc stated that the evidence was sufficient under the maritime law to invalidate the release had the suit been brought in the admiralty instead of in the State Court. We have already argued that the law should be the same in both courts.

Respondents argue that the most this court can accomplish is a new trial in view of the statement of the Pennsylvania Sup. Ct. that, had it concluded that the judgment should be reversed on petitioner's appeal; they would not have directed judgment to be entered on the verdict but

would have reinstated the motion for a new trial. (Respondents' Brief, p. 28)

We respectfully submit that this court can do more than merely accomplish a new trial. It requires no argument to say that this court may direct that judgment may be entered on the jury's verdict in favor of petitioner. The motion for a new trial was carefully considered by the court of Common Pleas sitting en banc and was denied as follows: (R. 320a)

> "The trial judge left the matter to the jury. In a fair and impartial charge, the evidence for the plaintiff and defendants was properly analyzed. . . . Therefore, the motion of defendants for a new trial should be refused."

A new trial must be substantially the same as the first trial. To send the case back for retrial when both parties have had their day in Court can accomplish no useful purpose. We respectfully urge that this Court reverse the judgment of the court below and direct that judgment be entered on the verdict.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
Counsel for Petitioner.

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IN THE

Supreme Court of the United States

October Term, 1941.

No. 447. 67

WADE GARRETT,

Petitioner,

v.

MOORE-McCORMACK LINES, INC., and
AMERICAN SCANTIC LINE,

Respondent.

Respondent's Brief in Opposition to Writ of Certiorari

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v.

MOORE-McCORMACK LINES, INC. AND AMERICAN SCANTIC LINE,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO WRIT OF CERTIORARI.

SUMMARY OF ARGUMENT.

I. Petitioner for Certiorari Does Not Fully State the Facts in Regard to the Extent of the Injury and the Circumstances Surrounding the Release.

II. The Quantum and Nature of Evidence Necessary to Take to a Jury the Question of the Validity of a Release Is a Matter of Procedure and Governed by the Law of the Forum.

III. Even if the Question of What Constitutes a Jury Question on the Validity of a Release Were a Matter of Substantive Law, in an Action Brought in a State Court the Common Law Rule and Not the Admiralty Rule Would Apply.

IV. The Petitioner Is Bound by the Rules of Procedure and the Limitations of Jurisdiction of the Forum Which He Has Selected.

ARGUMENT.

I. Petitioner for Certiorari Does Not Fully State the Facts in Regard to the Extent of the Injury and the Circumstances Surrounding the Release.

The following facts are omitted by Petitioner in his statement of the case but are set forth in the opinion of the Supreme Court of Pennsylvania, *Garrett v. Moore-McCormack Co., Inc.*, 344 Pa. 69, 1942 A. M. C. 282:

1. Petitioner was taken ashore and treated at Gdynia, Poland, not because of the accident of which he complained but because of a broken jaw suffered in a brawl in Copenhagen subsequent to the alleged accident. Page 72 of Pa. report; page 284 of A. M. C.

2. The alleged injuries to his back and spine were in fact incurred in another accident. For the same back and spine injuries he had pending a suit against the Southern Steamship Company at the time of the trial of the case at bar. Page 74 of Pa. report; page 285 of A. M. C.

3. Upon return of Petitioner to the United States, all money advanced by Respondent to him was in settlement of the claim for injuries. Respondent contended that no wages were owing. An itemized voucher for all wages payable up to February 8th had been signed by Petitioner at Gdynia. Page 73 of Pa. report; page 284 of A. M. C.

4. The circumstances surrounding the execution of the release were such that Petitioner entered into it without pressure from Respondent and with full knowledge and understanding of his act. Page 73 of Pa. report; page 285 of A. M. C.

II. The Quantum and Nature of Evidence Necessary to Take to a Jury the Question of the Validity of a Release Is a Matter of Procedure and Governed by the Law of the Forum.

It was recently held by Judge Goodrich in the case of *Boyle v. Ward*, 125 F. 2nd, 672, January 26th, 1942, that the question of sufficiency of evidence for a case properly to be submitted to a Jury is a question of procedure and therefore governed by the law of the forum. In that case suit was brought in the Federal Court for the Middle District of Pennsylvania to recover damages for injuries sustained in an automobile accident which occurred in New York. The case arose in the Federal Court on diversity of citizenship. It was complained that the Federal Court for the Middle District of Pennsylvania erred in not applying the New York rule with regard to the sufficiency of the facts to establish negligence. It was held that the Pennsylvania rule should be applied, because as classified by the law of Pennsylvania, the question was one of procedure.

In accord with this view are:

Fortein v. D. L. & W. Ry. Co., 90 N. J. L. 137, 100 A. 194;

Singer v. Messina, 312 Pa. 129, 167 A. 584;

Beale, Conflict of Laws (1935), Volume 3, page 1611;

Restatement, Conflict of Laws, Section 595, Comment a, page 710; comment b, page 711.

III. Even if the Question of What Constitutes a Jury Question on the Validity of a Release Were a Matter of Substantive Law, in an Action Brought in a State Court the Common Law Rule and Not the Admiralty Rule Would Apply.

Admiralty Jurisdiction is exclusive of State Courts. The Act of Congress, June 10, 1922, C. 216 Section 2; 42 Stat. 635; 28 U. S. C. A. Section 371 provides that

> "The jurisdiction vested in the Courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the Courts of the several States: . . .
>
> Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right to a common-law remedy where the common law is competent to give it . . . ."

The Moses Taylor v. Hammons, 4 Wall. 411, 18 L. Ed. 397 (1867), an opinion by Mr. Justice Field, held that a similar provision in an earlier Act of Congress making admiralty exclusively a federal jurisdiction was constitutional.

The action in the case at bar was brought in a State Court to enforce rights at law created by Section 33 of the Federal Statute known as the Jones Act, 41 Stat. 1007, 46 U. S. C. A., Section 688. Petitioner seeks to have such rights supplemented by the admiralty rule that a seaman is a ward of the admiralty and therefore releases signed by him must be established by the opposing party and especially scrutinized by the Court. In a State Court, however, only common law or statutory rules of law may be invoked. The Pennsylvania Supreme Court, therefore,

properly applied its common law rule that to bring before a Jury the question of a validity of a release, the evidence against it must be "clear, precise and indubitable."

IV. The Petitioner Is Bound by the Rules of Procedure and the Limitations of Jurisdiction of the Forum Which He Has Selected.

It was open to the Petitioner to have brought his suit in personam in admiralty to be heard by a judge sitting without a Jury, or in the law side of the United States District Court to be heard by a Judge sitting with a Jury, or in the State Court. Having selected the latter, he cannot now be heard to complain of the procedure and the jurisdictional limitations of his choice.

Respectfully submitted,

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Attorney for Respondent.

KRUSEN, EVANS AND SHAW,
Of Counsel.

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Respondents.

On Writ of Certiorari to the Supreme Court of the State of Pennsylvania.

RESPONDENTS' BRIEF.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

RESPONDENT'S BRIEF.

I.

SUMMARY OF FACTS.

A statement or summary of the facts, the Jury having returned a verdict in favor of the petitioner, may seem irrelevant. However, in this case there are two important reasons for the summary of facts given below.

First, one of the issues now before the Court is the validity of a certain release admittedly executed by the petitioner. The only testimony calculated to establish the invalidity of this release comes from the mouth of the petitioner himself. Therefore, the credibility of the petitioner and particularly the credibility of his testimony relating to or attempting to establish the invalidity of the release becomes one of the most important issues in this case.

Second, the petitioner in his brief has seen fit to make a "The Statement of the Case" which in several instances

is misleading and incorrect and which, therefore, makes necessary this "Summary of Facts" in order to give a clear picture of the fact situation.

The petitioner makes a statement in his brief which must, at the very outset, be challenged on the grounds that there is no foundation, argumentative or otherwise, to support it.

In Section III of his brief under the caption "The Statement of the Case", at page 2, the petitioner states what he contends are the facts of this case. We quote from petitioner's brief at bottom of page 2, "Note, All references to the record followed by the letter "a" refer to the typewritten record filed with the petition for writ of certiorari".

The petitioner then proceeds to make a statement starting about a third of the way from the top of page 5 of his brief and ending above the first paragraph on page 5 which statement we quote:

> "At the trial of the case respondent introduced an X-ray which purported to have been taken in 1935 by the Public Health Service in Philadelphia and which showed fractures of the 3rd and 4th transverse processes. The X-ray plate itself had two different numbers upon it, both in handwriting, and not in the usual printed form and the envelope within which the plate was contained was marked on the outside 'Negative'. The plate was introduced for the purpose of showing that the petitioner suffered from fractures on the spinal processes before this accident. Petitioner then promptly offered the entire record of the Public Health Service from which the aforementioned X-ray plate had been taken. This record included the report of the government X-ray specialist who had read the plate which was taken in 1935 and whose report showed the

plate which he took at that time to be negative for fractures. This offer was objected to by the respondent and the objection was sustained by the Trial Judge so that the X-ray plate went into the evidence without the report of the specialist which was made at the time the original X-ray was taken."

Respondent makes the following observations concerning the above quotation:

1. There is absolutely no foundation in the record for such a statement nor is there anything in the record which would give it even inferential verity.

2. The petitioner states in his brief that his statement of facts contains a reference by page number to the record filed with the petition for writ of certiorari. The statement quoted above however, does not contain any reference by page or otherwise to the record for the obvious reason that the record contains absolutely nothing to support such a statement.

3. The statement of facts given by the petitioner in his brief is substantially the same, in fact almost word for word the same, as the statement of facts given in his brief filed with the Supreme Court of the State of Pennsylvania, with the exception of the statement quoted above which was omitted.

4. References to the x-ray taken of the petitioner in August of 1935 are found in the record accompanying the petitioner's petition for writ of certiorari at the following pages: (142a), (143a), (146a), (178a), (181a), (261a), (279a), (280a).[1]

[1] References to the record followed by "a" refer to the typewritten record filed by petitioner with the petition for writ of certiorari.

5. An examination of the complete record and particularly of the references given in paragraph 4 above clearly show that there was not produced in Court and/or refused in evidence a record from the Public Health Service disclosing that the findings or reading of the x-ray in question were "negative". The printed record in this Court at Page 18 in the opinion of the Supreme Court of Pennsylvania states "Nothing that the plaintiff wished to put in the record was excluded pursuant to the local rule".

6. At the trial both the petitioner's doctor and the respondent's doctor read the x-ray taken in August of 1935 and both agreed that it showed fractures in the same places as the x-rays taken in 1937 after the alleged accident which is the subject of this suit.

7. This case took approximately one week to try in the Court below and the x-ray of August 1935 was produced on the third day of the trial. The petitioner, however, did not recall his expert witness, one, Dr. Ostrum who had testified on first day of the trial as to his findings based on the x-ray of 1937, to read the x-ray of August 1935.

8. The Common Pleas Court and the Supreme Court of the State of Pennsylvania both had before it the complete record but did not doubt the authenticity of the x-ray of 1935. Below are given quotations from the opinions of the Trial Court and of the Supreme Court of Pennsylvania which clearly indicate that no question of the authenticity of the x-ray in question was raised until now.

Transcript of Record, page 10:

> "The testimony produced by the plaintiff is entirely unreliable."

Transcript of Record, page 11:

"When one considers that the major portion of his claim of injuries is that he has arthritis from the injury received to his spine, one can see how doubtful this claim for injuries is. When his own physician, who had testified as to what the x-ray taken in 1937 disclosed, was shown an x-ray plate which was after the accident in 1935 and was asked if those were the same fractures he saw in the x-ray plates (those of 1937) his reply was Yes.

"It therefore seems clear that the condition from which this man alleges he is now suffering was present in 1935. It may well be that the arthritic condition has developed, but the same fracture existed in both x-rays."

The quotations above were also quoted by the Supreme Court of Pennsylvania in its opinion. See Transcript of Record pages 15 and 16.

The petitioner claims that while in the service of the respondent's vessel a heavy hatch cover fell on him (R. 25a) and that as a result he sustained fractures of the jaw, ankle, hand and of certain transverse processes of the spine. (R. 132a.)

The petitioner admits that on March 24th, 1937, he came to the office of the respondent's claim agent (R. 37a), and there signed a release of his claim for damages resulting from his alleged injuries. He attempts to nullify the legal effect of this release by stating that on the morning in question he was intoxicated, and that he had taken several veronal pills which he had previously, and are generally taken to encourage sleep.

The petitioner admits that after the alleged accident, he walked under his own power to the galley of the vessel

and had a cup of coffee (R. 27a); and from there walked to the mate's room for some liniment and tape (R. 27a); and that the next day he went ashore to a Doctor Nielsen who examined him and found contusions of the hand and foot, and recommended that he be placed on light duty for two or three days (R. 28a, 29a), (R. 276a). The petitioner further admits that two days after he sustained the alleged injuries he went ashore in Copenhagen to a saloon where he had a few drinks; that he came back to the vessel that night with a note to the Captain from the proprietress of the saloon asking for a certain sum of money; that the Captain refused to give him any money and ordered him to bed (R. 70a, 71a). It was not until after this occasion that he went to a hospital at Gdynia. (R. 72a.)

The Master of the vessel on which the petitioner claims to have been injured, testified that on the occasion (R. 188a) when the petitioner returned to the vessel after having been ashore and visiting the saloon in Copenhagen, he was intoxicated, that his jaw was swollen and he was bleeding at the mouth. The Captain further testified that because of petitioner's condition he refused to give him the money he requested and ordered him to his quarters and to bed. The Master further testified that he saw the petitioner after the injury, alleged to have been caused by the falling of a hatch cover, and before he went to the saloon at Copenhagen. Except for iodine on his hand, the petitioner showed no evidence of having been injured (187a) at that time.

As to the circumstances surrounding the execution of the release, the petitioner admits that he came to the office of the respondent's claim agent on four different occasions; that on the first occasion he signed a statement of the facts on which he based his claim (R. 79a); and that he signed a

receipt on each of the first three occasions for sums paid to him on account of "injury" (R. 74a, 75a). (The record (278a) shows the word "Inj." on the three receipts which were offered in evidence as "illegible" but the testimony of Alfred O. Suessmuth (R. 101a) clearly indicated that the word transcribed in the record as "illegible" is "Inj", an abbreviation for injury.)

The respondent's testimony, which stands uncontradicted, establishes the fact that the petitioner was offered $100.00, less advances, in settlement of his claim on March 23, 1937 and was told to go home and think it over and come back the next day; that the petitioner returned the next day, agreed to accept the $100.00 and signed the release (R. 96a, 98a). The petitioner was familiar with releases, having signed at least three others on prior occasions (R. 59a, 62a, 68a, 69a). The petitioner further admits that he was given the release after he had signed it and that he went unattended by anyone in respondent's employ, from the claim office of the company in Hoboken, New Jersey, to their paymaster's office in New York City; and that at the paymaster's office he delivered the release and received his money (R. 38a). The petitioner further testified he knew he would have to get a discharge from the Staten Island Hospital in order to be admitted to another hospital. After he received the consideration for the release he went to the Staten Island Hospital and there obtained his discharge (R. 38a). He further testified that after receiving his discharge he came to Philadelphia. The petitioner's affidavit to the statement of claim in this case was executed in Philadelphia on March 27, 1937. (R. 9a, R. 85a.) He further testified that he returned to the hospital in Staten Island, although he had obtained a discharge from that hospital on the rep-

resentation that he wanted to go to a hospital in Chicago. He remained in the Marine Hospital at Stapleton, New York, until May 13th, 1937. On June 10th, 1937 he obtained a position at his regular employment as a seaman and continued to work regularly on six different vessels until the end of that year (R. 86a, 87a, 88a).

The most serious claim of personal injuries made by the petitioner is the alleged fracture of certain transverse processes. It was clearly established at the trial that these transverse processes had been fractured in another accident which occurred in 1935, two years before the alleged accident which is the subject of this action. This was established not only by the testimony of Doctor Russell, who testified for the respondent (R. 181a) from x-rays taken at the United States Public Health Service in August of 1935, but also by the testimony of the petitioner's doctor (R. 143a).

At the time of the trial an action was pending by this same petitioner, Wade Garrett, against the Southern Steamship Company in the United States District Court for the Eastern District of Pennsylvania (R. 52a). The petitioner testified in that action he was not claiming for any injury to his spine. However, in the statement of claim filed as of September Term 1935, No. 19010, by the petitioner in that action he did allege injury to his spine (R. 262a).

The record does not disclose any competent evidence that the injuries for which the petitioner is claiming damages were sustained in the manner and at the time alleged. The record (273a) merely shows a United States Public Health Service abstract of clinical record of an examination made March 18th, 1937, almost two months after the

alleged accident. Although this record indicates evidence of old fractures of the transverse processes, the record does not of itself, nor does any other competent medical testimony in the case, indicate even approximately when these fractures were sustained. There is only the petitioner's own uncorroborated testimony that these injuries were sustained in an accident on January 23d; and as against this, the record discloses irrefutable proof that the most serious of the injuries, to wit, fractures of the transverse processes of the spine, were sustained two years before this alleged accident. The petitioner's long accident and poor health record revealed in his cross-examination makes it extremely probable that he sustained the other injuries, for which he is here claiming, in various fights and accidents which occurred prior to his service on the "Minnequa" (53a-70a).

II.

SUMMARY OF ARGUMENT.

The argument of the respondent is an amplification of the following propositions:

1. Where a seaman brings suit in a State Court seeking recovery for injuries sustained on board a vessel, his action is determined by the common law of the state or forum of his selection.

2. The petitioner was not denied any substantive right which he had in admiralty.

3. The petitioner's release was a bar to his action in the State Court and if he had brought his action in admiralty or on the law side of the District Court the petitioner's release would have likewise been a bar to his action.

III.
ARGUMENT.

1. Where a Seaman Brings Suit in a State Court Seeking Recovery for Injuries Sustained on Board a Vessel, His Action Is Determined by the Common Law of the State or Forum of His Selections.

Article III, Section 2 of the Constitution of the United States provides that the judicial power of the United States shall extend:

> "to all cases of admiralty and maritime jurisdiction."

The Act of Congress of June 10th, 1922, c. 216 Section 2; 28 U. S. C. A. Sec. 371, provides:

> "The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the Courts of the several states;"

And provides:

> "Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy where the common law is competent to give it . . ."[2]

The clear meaning of the language of the Constitution and of the Judiciary Act, cited above is that Admiralty Courts (Federal) have exclusive jurisdiction of all admiralty matters unless the common law of the various states is competent to give a remedy.

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[2] The quotation given from the Judiciary Act above is a re-enactment of the Judiciary Act of 1789.

That is, although the jurisdiction of admiralty is exclusive as to all maritime matters, nevertheless, under certain circumstances cognizable in admiralty, the common law of the various states may be competent to give a remedy and if it is, the common law remedy is available.

In *The Moses Taylor v. Hammons*, 71 U. S. 411; 4 Wall. 411 (1867), judgment was rendered in the State Court of California in favor of the plaintiff for a breach of contract to transport him as a steerage passenger. The action was instituted under a California statute which provided for proceedings in rem against vessels. This Court reversed the judgment and dismissed the action for want of jurisdiction.

The opinion states, page 427:

> "The case presented is clearly one within the admiralty and maritime jurisdiction of the Federal Courts. The contract for the transportation of the plaintiff was a maritime contract."

And at page 431:

> "The case before us is not within the saving clause of the 9th section. That clause only saves to suitors 'the right of a common law remedy, where the common law is competent to give it'. It is not a remedy in the common law courts which is saved but a common law remedy. A proceeding *in rem*, as used in the Admiralty Court is not a remedy afforded by the common law; it is a proceeding under the civil law. When used in the common law courts, it is given by statute."

In the case cited above full force and effect was given to the Sections of the Constitution and Judiciary Act relating to the exclusive jurisdiction of the Federal Courts

over maritime matters. The circumstances of the cited case were such that the common law was not competent to give a remedy and it was therefore held that the State Court did not have jurisdiction.

In *Belden v. Chase*, 150 U. S. 674 (1893), the meaning of the saving clause is clearly demonstrated. The action arose out of a collision between two vessels in the Hudson River. The owner of one of them instituted an action for damages in the State Court of New York against the owners of the other vessel. Here the common law was competent to give a remedy. But the remedy given was that provided by the common law and not the admiralty law. The State Court held that if the plaintiff were guilty of contributory negligence, his contributory negligence barred recovery. The plaintiff contended that under the admiralty rule (and his contention under that rule was correct) the doctrine of divided damages should be applied. This Court held that the common law and not the admiralty law should govern the case.

This Court said at page 691:

> "The doctrine in admiralty of an equal division of damages in the case of a collision between two vessels, when both are in fault contributing to the collision, has long prevailed in England and this country. The Max Morris, 137 U. S. 1, 11 Sup. Ct. 29. But at common law the general rule is that, if both vessels are culpable in respect of faults operating directly and immediately to produce the collision, neither can recover damages for injuries so caused. Atlee v. Packet Co., 21 Wall. 389.
>
> "In order to maintain his action, the plaintiff was obliged to establish the negligence of the defendant, and that such negligence was the sole cause of the in-

jury, or, in other words, he could not recover, though defendant were negligent, if it appeared that his own negligence directly contributed to the result complained of."

If the doctrine of *The Moses Taylor* case and of *Belden v. Chase* is still the law of the land it should be unnecessary to proceed further. Neither case has been overruled, although both have been frequently cited, and, therefore, it may be stated with confidence that their doctrines are still good law.[3]

The petitioner bases his argument (petitioner's brief, page 8) on *Chelentis v. Luckenbach* and *Carlisle Packing Co. v. Sandanger*. These cases relate to maritime torts and were actions started in State Courts. But it is respectfully submitted that the petitioner has misconceived the import of their holdings.

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[3] In *In Re Pennsylvania R. Co.*, 48 F. (2d) 559 (1931), the Circuit Court of Appeals, Second Circuit, it was stated by L. Hand, Circuit Judge, page 566:

"We can see no escape therefore from concluding that as between a common-law court and a court of admiralty the question is one of procedure, though in general the law is otherwise."

. . . . .

"It was not suggested in *The Max Morris* that the liability there in suit was subject to divided damages because it was maritime, or that action would not be barred at law. Rather it was implied that the rule of the forum controlled. So too in *Belden v. Chase* it was assumed that the doctrine varied with the court. Nor can we see anything in *Chelentis v. Luckenbach S. S. Co.*, looking otherwise."

. . . . .

"So far as we can find there is nothing in the books beyond our own overruled dicta which throws doubt upon *Belden v. Chase*."

Chelentis v. Luckenbach was an action at law started in the Supreme Court of New York. The plaintiff's injuries were sustained in carrying out the orders of a superior officer while the vessel, on which he was employed, was at sea. The plaintiff relied on the Act of March 4, 1915, c. 153, 38 Stat. 1164, 1185 which provided:

> "That in any suit to recover damages for any injury sustained on board vessel in its service seamen having command shall not be held to be fellow servants with those under their authority."

The case was transferred to the United States District Court because of diversity of citizenship. The action was continued as a suit at common law in the District Court. The plaintiff contended the Act of Congress of 1915 eliminated the "fellow servant rule". This Court held that the Act of 1915 could only apply in a suit in admiralty but since the "fellow servant rule" was not a defense in admiralty, the Act was of no effect.

The significance of the *Chelentis* case is, therefore that the Act of 1915 could not extend in application beyond suits brought in admiralty; and, as applied to admiralty cases the Act was meaningless because the "fellow servant rule" was not a defense. The case is not apposite. Only the reasoning of the opinion, not concurred in by Mr. Justice Holmes, seems to favor the petitioner. Such reasoning, it is submitted, is no more than dictum. The reasoning was that only admiralty remedies may be applied in State Courts (a premise in direct contradiction to the Judiciary Act and to the doctrine of *Belden v. Chase*).

The Respondents suggest that the same results could have been reached and no cause for misunderstanding given, if the reasoning had been that the Act of 1915 did not extend in scope beyond actions brought in admiralty, and,

therefore, recovery in the case, which was brought at common law, was barred by the common law "fellow servant rule".

In the *Carlisle Packing Company* case the plaintiff instituted his action in the State Court of Washington alleging that the injuries he sustained resulted from the negligence of the owner of the boat on which he was employed. The circumstances of the accident, the storage of gasoline in a can marked "coal oil" and the absence of life preservers, constituted a cause of action under the common law. Judgment in favor of the plaintiff was affirmed in the Supreme Court of the State of Washington and in the Supreme Court of the United States. It was unnecessary for the United States Supreme Court to base its decision on admiralty law, as the common law was competent to give the same remedy. As in the *Chelentis* case the reasoning has no more force than dicta; which dicta is likewise in direct conflict with the Constitution and the Judiciary Act.

The petitioner places much reliance upon decisions arising under the Federal Railroad Employers Liability Act. In fact twelve of the twenty-eight cases cited by petitioner, are such cases. The import of these decisions has likewise been misconceived by petitioner.

Neither the Constitution nor the Judiciary Act give the Federal Court exclusive jurisdiction of railroad employees as distinguished from the exclusive jurisdiction given to the Admiralty Court (Federal) in actions involving seamen.

The Federal Railroad Employers Liability Act in effect is an express direction from Congress to interpret the rights of railroad employees injured in the course of their employment, in accordance with the provision of that Act whether the action be instituted in a State or Federal

Court. On the other hand, as to seamen, we have an express direction from the Constitution and from Congress through the Judiciary Act, forbidding the several states to apply admiralty rules because jurisdiction is given exclusively to the Federal Courts.

2. The Petitioner Was Not Denied Any Substantive Right Which He Had in Admiralty.

The procedural rules of the State Court of Pennsylvania did not result in the exclusion of any testimony or evidence relating to the validity of the release. The Supreme Court of Pennsylvania stated in its opinion (Record, page 17):

> "It is unnecessary, in disposing of this appeal, to consider whose duty it was to put in the evidence on the subject because none was excluded; all the evidence is in and the legal question is what is its effect? As the evidence was insufficient to go to the Jury, the learned trial judge should have directed a verdict for defendants on the ground that the release was valid. The verdict not having been directed, as requested by defendants, it was the duty of the Court in banc, in considering defendants' motion for judgment non obstante veredicto, to decide whether the evidence should have been submitted to the Jury (citing authorities) and if insufficient, to enter judgment for the defendants."

Therefore, it makes no difference at this stage in the proceedings whether procedurally the plaintiff had the burden of first moving forward with evidence intended to establish the invalidity of the release or whether the defendants had that burden, as petitioner contends they had by the so-called admiralty rule. Since all of the evidence relating to the subject matter in question was admitted it became the duty of the presiding judge whether the action be

in admiralty or at common law, to determine the question of the validity of the release. The Common Pleas Court in which the case was tried and the Supreme Court of Pennsylvania both examined this evidence and both reached the conclusion that nothing was produced to establish the invalidity of the release.

It is conceded that a state may not require a plaintiff to prove as part of his cause of action, under Federal law, (other than admiralty law, which is not applicable in state courts) more than what constitutes the cause of action as defined by that law. This was held in *Central Vermont Railway v. White*, 238 U. S. 507, 35 Sup. Ct. 865. The opinion in that case goes on to state, however, pages 511 and 512:

> "As long as the question involves a mere matter of procedure as to the time when and the order in which evidence should be submitted, the State Court can, in those and similar instances, follow their own practice even in the trial of suits arising under the Federal law."

As a matter of fact, the petitioner in the case at bar was not required by any action of the trial judge to move forward with testimony attempting to establish the invalidity of the release. This he did voluntarily in response to questions of his own counsel under direct examination (Record 37a; 38a).

The law of the State of Pennsylvania, as well as the maritime law, permits a plaintiff to overcome the effect of a release under certain and similar circumstances. The only difference between the two tribunals is not one of substance but one of procedure or burden of proof. That is, which party should first move forward with testimony relating to the validity of a release? Under the maritime

law there are authorities tending to establish the doctrine that the District Court Judge, sitting in Admiralty without a Jury should require the defendant who relies on a release to first offer testimony to establish its validity. This doctrine of the admiralty law is conceded only for the purpose of this argument. The writer was unable to find any United States Supreme Court case sustaining it. In fact Mr. Justice Holmes while presiding over the Supreme Court of Massachusetts thought otherwise.[4] Under the law of the State of Pennsylvania the trial judge, irrespective of the presence of a Jury, must first be satisfied that the plaintiff, attempting to invalidate the release, presents testimony of

[4] See *Rosenberg v. Doe*, 146 Mass. 191, where Mr. Justice Holmes stated concerning the release of a seaman, "If they do sign, the effect of their signatures must be determined by the ordinary rules of law. Signature under such circumstances as we have supposed conclusively imports assent to the instrument, and the instrument expresses consent to the settlement. It is contrary to first principles to allow a person whose overt acts have expressed assent to deny their effect on the ground of an undisclosed state of his mind for which no one else was responsible.. *O'Donnell v. Clinton*, 145 Mass. 461. The common law makes no exception to these principles in favor of seaman, nor do we see any evidence that the statute meant to make one."

In *The Adonis*, 38 F (2d) 743, which was an action in Admiralty, the release of the plaintiff, a seaman, was set up as a bar. The court held the release to be valid and dismissed the libel. Woolley, Circuit Judge, speaking for the court stated in the opinion at page 744:

> "The Libellant realizing that to put the release out of the case he must sustain the burden of proving that he signed it through duress, fraud, or mistake, says, finally, that he signed it through mistake in that he did not read it, and 'thought it was a receipt for the $125. (he) was getting.' There is no evidence that the libellant could not read. There is evidence that he looked at the paper. He signed it. He is therefore presumed to have known and understood its contents."

sufficient weight and credibility to raise a substantial question as to its validity. If so, the plaintiff is entitled to go to the Jury on that question.

The petitioner in support of his argument that the burden of proof is on the party asserting the release as a defense, on page 24 of his brief cites the case of *Deemer v. United Fruit Company*, 1937 A. M. C. 286, wherein it was stated by Judge Maris then a District Judge, now a Judge of the Circuit Court of Appeals for the Third Circuit, that: "• • • one who sets up a seaman's release has the burden of sustaining it as fairly made with and fully comprehended by the seaman."

The *Deemer* case was an action at law in the District Court and the question of the validity of the release was submitted to the Jury which rendered a verdict in favor of the plaintiff. Subsequently the Court entered judgment for the defendant upon a point of law reserved by the Court on the ground that the plaintiff's testimony to the effect that he did not know that he was signing a release but thought that he was signing a receipt for some money which was due him, was not sufficient to raise a question for the Jury.

The plaintiff in this action is attempting to bring his claim, maritime in nature, in the State Court where he may have a trial by Jury, and bring with him certain procedural benefits which the law of the forum of his selection does not permit.

The plaintiff is also attempting to gain an additional advantage not available in admiralty; that is to have a Jury determine the question of liability and fix the amount of his award. In the Admiralty Court if the release is not valid, the Judge determines liability and fixes the amount of the award.

3. The Petitioner's Release Was a Bar to His Action in the State Court and if He Had Brought His Action in Admiralty or on the Law Side of the District Court the Petitioner's Release Would Have Likewise Been a Bar to His Action.

The petitioner's entire argument is based on the premise that his release, if he had instituted his action in admiralty would have been judicially determined to be invalid. If he is mistaken in this, then his entire case must fall and consideration of any of the other issues in this appeal becomes unnecessary.

It is here urged that this Court or any Court below in determining the validity of the release in this case, on the evidence in this record, in the light of any recognized rules of interpretation, no matter how favorable to the petitioner, would have reached the conclusion that the release was valid. It is difficult to conceive of a set of circumstances which would tend more than those in this case, to establish the validity of a release. To declare this release invalid would be tantamount to a judicial determination that releases of seamen, regardless of the circumstances leading up to and surrounding their execution, are invalid and that no claim brought by a seaman may be settled out of Court.

Is there any justification for assuming that if a State Court sat as a Court in Admiralty giving full appreciation to the fact that the seaman is the ward of the admiralty and that his rights must be jealously guarded by the Court, would have reached any different conclusion as to the validity of the release than was reached in this case? In determining that question the judge, whether he be sitting in admiralty or in the State Court, must consider the following elements:

1. The credibility of the testimony calculated to invalidate the release.

2. All of the testimony tending to invalidate the release comes from the mouth of the plaintiff or petitioner himself and is contradicted by two witnesses for the defendant.

3. The improbability of the petitioner, if he sustained the serious injuries he alleges on board the vessel, of being able to walk to the galley for coffee and to go ashore, two days after the alleged accident, to a salon and there drink and run up a bill of 30 kronins.

4. The improbability that a doctor in Copenhagen would after an examination of the petitioner one day after the alleged accident, find only slight injuries which would cause the petitioner to be placed on light duty for two or three days.

5. The petitioner's testimony that in another suit, then pending, he was not claiming for any injuries to his spine whereas the statement of claim filed in that action to which he had also sworn, did claim injuries to the spine.

6. The x-ray picture taken in 1935 of the petitioner (two years before the alleged accident which is the subject of this action) showed fractures in identical places with the fractures shown in the x-rays relied upon in this action.

7. The petitioner came voluntarily to the office of the respondent's claim agent on four or five different occasions and discussed his claim against the respondent company.

8. The respondent's claim agent gave the petitioner a figure at which it was willing to settle and the claim agent did not at that time urge the petitioner to accept but suggested that he go home and think it over and come back the next day.

9. The petitioner did return voluntarily the next day and signed a release.

10. The petitioner in his own testimony and almost in the same sentence gives inconsistent explanations of his act in signing the release; one being that he signed it because of the threat made by the claim agent to put him in jail and the other that he signed it because he was under the influence of intoxicating liquor and of veronal pills calculated to bring on sleep but which he had taken that morning.

11. The petitioner after signing the release was given certain papers including the release, and proceeded from the claim agent's office in Jersey City to the respondent's paymaster's office in New York City, a trip requiring upwards of one-half hour and there obtained his money.

12. The petitioner proceeded from there to the hospital at Staten Island and obtained a discharge so that he could go to a hospital in Chicago but instead went to Philadelphia where he consulted his attorney, the same attorney who represented him in the action against the Southern Steamship Company which was pending at the trial of this action, and there signed the statement of claim filed in this action.

The application of the "clear, precise and indubitable" rule is totally unnecessary. Since, no matter where the action is brought or what rules of procedure or interpre-

tation are applied a Judge must determine the question of validity of a release, it is submitted that an Appellate Court also may and should pass upon the validity of the release in the light of the circumstances set forth above.

The general rule relating to releases is the same throughout the various Courts and jurisdictions of the land. In general terms it has been frequently stated to be THE SIGNER OF A DEED OR OTHER INSTRUMENT EXPRESSIVE OF A JURAL ACT IS CONCLUSIVELY BOUND THEREBY.

The various Courts and jurisdictions throughout the land all recognize an exception to the general rule in cases where the signature to the release has been obtained through mistake, fraud or duress. The general rule relating to this exception is that evidence to overcome the effect of the admitted signature on the release must be clear, precise and indubitable. But as to the release of seamen in admiralty actions there is a conflict of authority as to the burden of proof and, the extent, the seaman being a ward of the admiralty, to which the Admiralty Judge should go in inquirying into the circumstances relating to its execution, to make certain that the seaman has not been imposed upon.

Following are decisions where, although the validity of the release was carefully inquired into by the Judge, the release was held a bar to the seaman's action under circumstances considerably more questionable than those in the case at bar.

In the *Annie L. Mulford*, 107 Fed. Rep. 525 (1901), the Court, sustaining the release of a seaman, stated, page 526:

> "There is no such proof to be found in the present record. The libellant's testimony stands alone in support of his allegations, and it is positively contra-

dicted by the testimony of the casualty company's agent. In such a situation, no corroborating circumstances being present, the written instrument must prevail. The libel is dismissed."

In *Harmon v. United States*, 59 F (2d) 372, the Circuit Court of Appeals, Fifth Circuit, points out that the admiralty doctrine requiring special inquiry as to the release of a seaman is more rigidly applied to clauses in shipping articles purporting to release rights which seamen have, and to releases of claims for wages.

The Court there stated, page 373:

"While the record would easily support a finding that in releasing his claim appellant did not act wisely, it does not at all appear therefrom that he was either mentally or physically incapacitated from fully understanding and appreciating what he deliberately did. . . . Here is a case of a matter in controversy, negotiations in regard to which, protracted over a considerable space of time in an atmosphere not of overreaching and double dealing, but of frankness and plain dealing, finally resulted in a settlement with nothing really set up to defeat it except the claim which of course may not avail, that one side obtained a better bargain than the other. Chicago and N. W. Ry. v. Wilcox, 116 F. 913."

In *James E. Wilson v. McCormick Steamship Co.*, 1940 A. M. C. 1004, suit was instituted in the State Court of California. The plaintiff, a seaman, claimed damages for personal injuries sustained while employed on defendant's vessel. Plaintiff's release was set up as a bar to his action.

The plaintiff alleged, with reference to the circumstances of signing the release, that at the time he was very weak, having just left the hospital that morning, that he

could only walk very slowly and that he had to stop several times and rest, that his legs were very weak and it seemed they would not hold his weight, that traffic made him dizzy and everything went hazy in front of his eyes, that he had terrific pain in his back. After signing the release he was given a check and went with a representative of defendant company to the bank where it was cashed.

The plaintiff produced a physician skilled in the treatment of nervous and mental diseases, who testified that the plaintiff, at the time he signed the release, was suffering from what is known as "anxiety neurosis", which disease though only temporary, would prevent him from having full charge of all of his mental faculties and cause him to be "unable to arrive at an answer which would be in keeping with his normal mental state when he was not ill."

The jury, disregarding the release, found a verdict in favor of the plaintiff.

On appeal to the Second Appellate District of the State of California the Appellate Court reversed and there entered judgment for the defendant.

In this case the Appellate Court considered both the *Adonis,* 38 Fed. (2) 743, and the case of *Bonici v. Standard Oil Co. of N. J.,* 103 Fed. (2d) 437.

The California Court seems to have taken into consideration the special rule urged in the case of seamen but reached a conclusion which was probably a mixture of its own and the admiralty rule with reference to the validity of a seaman's release. The Court said, page 1010:

> "We have discussed this matter at some length because of our concern or responsibility for seamen in cases of this nature. We are not unmindful that a release of this kind is not a bar preventing inquiry into the seaman's rights. As was said by the Third

Circuit Court of Appeals in the case of Adonis, 1930 A. M. C. 1177, 1179, 38 Fed. (2d), 743, 744, 'It can always be looked into * * *.' (Citing cases.) '* * * But a release of this kind formally signed, sealed, and witnessed, is, however, *prima facie* good, and cannot be set aside unless it was obtained by duress, mistake, or, in this case, by fraud, * * *.' Before courts will set aside solemn binding written contracts, proof of their invalidity must be clear and convincing. Were the rule otherwise, a written instrument would afford but slight protection to the parties."

At page 1013 the Court continued:

"With reference to the position of both the seaman and his employer in the making of a settlement of this kind, the United States Circuit Court of Appeals of the Second Circuit, in the case of Bonici v. Standard Oil Company of N. J., 1939 A. M. C. 585, 588, 103 Fed. (2d) 437, 438, said: 'Hence, while "one who claims that a seaman has signed away his rights to what in law is due him must be prepared to take the burden of sustaining the release as fairly made with and fully comprehended by the seaman," Harmon v. United States (5 Cir.), 1932 A. M. C. 1445, 59 Fed. (2d) 372 at page 373, nevertheless a release fairly entered into and fairly safeguarding the rights of the seaman should be sustained. Any other result would be no kindness to the seaman, for it would make all settlements dangerous from the employer's standpoint and thus tend to force the seaman more regularly into the courts of admiralty. Even if a seaman is the Court's ward, the Court cannot be always at hand to watch over him, for it can only move ponderously in a formal law suit. Fair settlements are in the interest of the men, as well as the employers'."

The petitioner in support of his argument that the release in the case at bar would be invalid if his action

had been brought in admiralty cites (petitioner's brief, page 21) *Sitchon v. American Export Lines, Hume v. Moore-McCormack Lines* and *Bonici v. Standard Oil.*

In *Sitchon v. American Export Lines* the seaman signed a release for $180.00 covering "injuries known and unknown". He relied upon an incorrect diagnosis of a Marine Hospital. It was later discovered that he had sustained a fractured skull. The Circuit Court of Appeals sustained the release and distinguished the case from *Bonici v. Standard Oil* on the ground that in the *Bonici* case an incorrect diagnosis was made by the defendant's physician and relied upon by the plaintiff.

In *Bonici v. Standard Oil* the distinction given above in the *Sitchon v. American Export Lines,* is all that is necessary.

In *Hume v. Moore-McCormack Lines* the release covered certain specific burns and "injuries and illnesses not known". It was alleged that at the time the release was executed neither party knew that the plaintiff was at that time suffering from tuberculosis. The summary judgment in favor of the defendant was reversed and the matter sent back to the District Court for trial. The release was not declared valid or invalid by the Circuit Court of Appeals but the case was sent back for trial with instructions that at that trial it should be discovered "whether appellant had any knowledge or intimation, when he signed the release, that he was suffering incipiently or otherwise, from tuberculosis." (page 347)

The Supreme Court of the State of Pennsylvania concluded its opinion with this remark which we quote (Record, Page 21):

> "We should perhaps add that if we had concluded that the judgment should be reversed on this, the plain-

tiff's appeal, we should not have directed judgment to be entered on the verdict but should have been required, by our consideration of the evidence, to have reinstated defendants' motion for a new trial and remitted the record for consideration by the Court below of that motion."

The statement above was doubtless inspired by the complete lack of credibility of the plaintiff's testimony.

It would appear and is here urged that the most the petitioner may obtain by this appeal is a new trial. But, assuming that this Court should adopt the view that the release in this case should not have been subjected to the "clear, precise and indubitable" rule but should have been considered in the light of the alleged admiralty rule and that with such instructions the matter should be sent back to the lower Court for re-trial and assuming further that the State Judge applying the so-called admiralty rule, should come to the conclusion that by its application the release was invalid and then further assuming that the case when submitted to the second jury would again result in a verdict in favor of the plaintiff; under such circumstances the case would return to this Court to hear the respondent's (who would then be the petitioner) contention that the State Court had not properly applied the admiralty rule and that it should have declared the release to be valid and a bar to petitioner's action. It is, therefore, urged that a circuity of action may be avoided by this Court, at this time, determining, if it finds that the so-called admiralty rule should be applied to the release, whether the release under that rule is valid or invalid. If valid, that is an end to the case. If invalid the case should go back to the lower Court for re-trial for the reason pointed out by the Supreme Court of the State of Pennsylvania.

IV.

CONCLUSION.

The petitioner, referring to the opinion of the Supreme Court of Pennsylvania, states at the end of his brief "the decision would alter the characteristic features of the maritime law and would destroy its uniformity of application". A reversal, not affirmance, of the decision of the Supreme Court of Pennsylvania would do just that. To sustain the contention of the petitioner in this case would be to invite all seamen asserting claims for personal injuries sustained on board vessels, and particularly those who had settled their claims and signed a release, to bring their action in the State Court. The State Courts would then become Admiralty Courts charged with the responsibility of applying admiralty law to all cases where a seaman is a party.

Whether or not the State Court had properly applied admiralty law would be a Federal question appealable direct from the Supreme Courts of the various states to the Supreme Court of the United States. Uniformity would be better maintained by affirming the judgment of the Supreme Court of the State of Pennsylvania and thus confine matters of an admiralty nature to the Admiralty Courts, permitting seamen to come into the State Courts only where the common law law is competent to give a remedy and to give only the remedy afforded by the common law.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1942.

No. 67.

WADE GARRETT,

Petitioner,

v.

MOORE-McCORMACK COMPANY, INC., and AMERICAN SCANTIC LINE,

Respondents.

On Writ of Certiorari to the Supreme Court of the State of Pennsylvania.

RESPONDENTS' REPLY BRIEF.

ROWLAND C. EVANS, JR.,
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IN THE

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MOORE-McCORMACK COMPANY, INC., AND AMERICAN SCANTIC LINE,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

RESPONDENT'S REPLY BRIEF.

Your Honorable Court is respectfully requested to give consideration to this respondents' reply brief because two questions were raised at the argument which was heard on November 12th, 1942, and which questions were not anticipated by counsel for the respondents and thus were answered without the consideration and study they deserved.

First:—the suggestion was made at the argument that the fairness of the settlement must be established as a basis to the validity of a release. So far as the writer has been able to find, no case of your Honorable Court has so held. The Circuit Court of Appeals has held to the contrary: see

Harmon v. United States, 59 Fed. (2d) 372, where the Circuit Court, Fifth Circuit, pointed out that even though the seaman had not acted wisely in making his settlement, nevertheless he was bound by his act. This and other authorities are discussed more fully at page 24 of respondents' brief.

The question of what is "fair" embraces many elements in a claim of this kind. It is doubtful if any two minds could agree to the penny as to what amount paid as consideration for a settlement is "fair." Liability and extent of injury must be carefully weighed. Certainly if the fairness of the settlement is subject to review, a considerable restraint on amicable settlements of claims of this kind must result.

It is here submitted that if the alleged Admiralty rule as to the burden of proof and/or fairness of a release be impressed upon common law Courts, in cases where a seaman elects to bring suit after having settled his claim and accepted the benefits of his settlement, the question of the validity of his release would necessarily have to be submitted to a jury on any unsupported statement of the suitor. It is suggested that this would be an invitation to seamen to first settle their claims for what they could get and then institute suit in a common law Court with the hope that a jury would disregard the release.

Second:—it was also suggested at the argument that the "*Arizona*", 298 U. S. 110, held that where a seaman brings his action in a State Court he not only brings with him all of the benefits of Statutes of the United States as provided in the Jones Act but also any favorable Judge-made doctrines of the Admiralty law. It is here pointed out that in the "*Arizona*" case the injury arose from a de-

fective appliance on the vessel. That being so, it may fairly be reasoned that the defective appliance placed the suitor in the same position as a railroad employee would be if his injury resulted from a defective railroad appliance. By such reasoning the "assumption of risk" doctrine would not be a defense under the Jones Act any more than it would be under the non-statutory Admiralty law.

The holding of the "*Arizona*" case was therefore not dependent upon the application of Judge-made Admiralty law in a State Court. The remedy and all possible defenses to it were covered by the Railroad Employers Liability Act as brought into the Admiralty law by the Jones Act.

The opinion in the "*Arizona*" case does not indicate that the question of the "saving clause" of the Judiciary Act was raised or considered.

Finally, it is submitted that in the "*Arizona*" case the question dealt with a substantive Admiralty right and not as in the case at bar with the question of the method or procedure of proving a fact; to wit, the validity of a release.

Respectfully submitted,

ROWLAND C. EVANS, JR.,
Counsel for Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 67.—October Term, 1942.

Wade Garrett, Petitioner,
vs.
Moore-McCormack Company, Inc., and American Scantic Line.

On Writ of Certiorari to the Supreme Court of the State of Pennsylvania.

[December 14, 1942.]

Mr. Justice Black delivered the opinion of the Court.

The petitioner was injured while working as a seaman for respondent on a vessel traveling between the United States and European ports and spent a number of months in hospitals in Gdynia, Poland, and in the United States. He brought this suit in a Pennsylvania State Court for damages pursuant to Section 33 of the Merchant Marine (Jones) Act,[1] and for maintenance and cure.[2] The Pennsylvania courts, as this litigation evidences, are apparently quite willing to make themselves available for the enforcement of these rights.

Petitioner attributed his condition to a blow by a hatch cover which allegedly fell on him through respondent's negligence. Respondent joined issue generally, contested the extent of any injuries received and further contended that if serious injuries did exist they were caused by a fight in Copenhagen or by accidents prior to the voyage. As an additional defense the respondent also alleged that for a consideration of $100 petitioner had executed a full release. Denying that he had any knowledge of having signed such an instrument the petitioner asserted that if his name appeared on it, his signature was obtained through fraud and misrepresentation, and without "legal, binding and valid consideration."

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[1] 46 U. S. C. 688.

[2] The right of a seaman to recover damages for negligent injury arises under the Jones Act and the right to maintenance and cure irrespective of negligence arises under the law of admiralty. These rights are independent and cumulative. Pacific Co. *v.* Peterson, 278 U. S. 130, 138. For a general discussion of maintenance and cure see The Osceola, 189 U. S. 158; Cortes *v.* Baltimore Insular Line, 287 U. S. 367, 371; Calmar S. S. Corp. *v.* Taylor, 303 U. S. 525, 527.

The petitioner did execute a release for $100 several days after his return to this country. His testimony was that his discussion with respondent's claim agent took place while he was under the influence of drugs taken to allay the pain of his injury, that he was threatened with imprisonment if he did not sign as directed, and that he considered the $100 a payment of wages.[3] The respondent's evidence was that the $100 was paid not for wages but to settle all claims growing out of the petitioner's injuries, that the petitioner had not appeared to be under the influence of drugs, and that no threats of any kind were made.

Upon this and much other evidence relating to the cause and extent of the injuries, the jury rendered a verdict for the petitioner for $3000 under the Jones Act, and $1000 for maintenance and cure.

Respondent made a motion for a new trial and judgment non obstante verdicto which under the Pennsylvania practice was submitted to the trial court en banc.[4] That court gave judgment to the defendant non obstante verdicto, not upon an appraisal of disputed questions of fact concerning the accident, but because of a conclusion that petitioner had failed to sustain the burden of proof required under Pennsylvania law to invalidate the release. It conceded that "in Admiralty cases, the responsibility is on the defendant to sustain a release rather than on a plaintiff to overcome it", but concluded that since petitioner had chosen to bring his action in a state rather than in an admiralty court, his case must be governed by local, rather than admiralty principles. Under the Pennsylvania rule one who attacks the validity of a written release has the burden of sustaining his allegation by "clear, precise, and indubitable" evidence; meaning evidence "that is not only found to be credible but of such weight and directness as to make out the facts alleged beyond a reasonable doubt." Witnesses who testify against the release must not only be credible but "distinctly remember the facts to which they testify and

[3] There were two elements of the wage dispute: (a) whether wages should be computed at $50.00 or $72.50 a month; (b) whether since petitioner was left in a hospital in Poland and could not return with his ship, he should have been paid wages until he actually arrived in his home port. He was paid only up to the time he left the vessel. There is clear authority to support a claim for wages to the end of the voyage for which petitioner had been signed. The Osceola, *supra*, 175.

[4] In Pennsylvania the trial judge does not pass upon such motions alone; instead they are heard and decided by three judges of the court sitting en banc. Purdon, Penn. Stat. Ann., Vol. 12, Par. 680.

narrate the details exactly." The court held that since the petitioner had not sustained this burden of proof, the trial judge should have withdrawn the case from the jury.

The Supreme Court of Pennsylvania took a somewhat different view. It held that in an action of this sort the Pennsylvania court was obligated "to apply the federal law creating the right of action in the same sense in which it would have been applied in the federal courts." However, it affirmed the judgment in the belief that the rule as to burden of proof on releases does not affect the substantive rights of the parties, but is merely procedural, and is therefore controlled by state law.

I. Respondent's argument that the Pennsylvania court should have applied state rather than admiralty law in measuring the rights of parties cannot be sustained.

We do not have in this case an effort of the state court to enforce rights claimed to be rooted in state law. The petitioner's suit rested on asserted rights granted by federal law and the state courts so treated it. Jurisdiction of the state court to try this case rests solely upon Sec. 33 of the Jones Act and upon statutes traceable to the Judiciary Act of 1789 which "in all civil causes of admiralty and maritime jurisdiction" saves to suitors "the right of a common-law remedy where the common law is competent to give it."[5] These statutes authorize Pennsylvania courts to try cases coming within the defined category.[6] Whether Pennsylvania was required by the acts to make its courts available for those federal remedies, or whether it could create its own remedy as to maintenance and cure based on local law, we need not decide;[7] for having voluntarily opened its courts to petitioner, the questions are whether Pennsylvania was thereupon required to give to petitioner the full benefit of federal law and if so whether it failed to afford that benefit.

There is no dearth of example of the obligation on law courts which attempt to enforce substantive rights arising from admiralty law to do so in a manner conforming to admiralty practice. Contributory negligence is not a barrier to a proceeding in admiralty or under the Jones Act, and the state courts are required to

[5] 28 U. S. C. sec. 371.

[6] Engel v. Davenport, 271 U. S. 33, 37, 38 (Jones Act); The Belfast, 7 Wall. 624, 644; Garcia Y. Leon v. Galceran, 11 Wall. 185, 187-188; Panama Railroad v. Vasquez, 271 U. S. 557, 560-561. The last three cases involve non-statutory actions.

[7] The Hamilton, 207 U. S. 398, 404; Just v. Chambers, 312 U. S. 383, 391.

apply this rule in Jones Act actions. *Beadle* v. *Spencer*, 298 U. S. 124. Similarly state courts may not apply their doctrines of assumption of risk in actions arising under the Act. *The Arizona*, 298 U. S. 110; *Socony-Vacuum Co.* v. *Smith*, 305 U. S. 424. State courts, whether or not applying the Jones Act to actions arising from maritime torts, have usually attempted, although not always with complete success, to apply admiralty principles.[8] The federal courts when treating maritime torts in actions at law rather than as suits in admiralty have also sought to preserve admiralty principles whenever consonant with the necessities of common law procedure.[9]

This Court has specifically held that the Jones Act is to have a uniform application throughout the country unaffected by "local views of common law rules." *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, 392. The Act is based upon and incorporates by reference the Federal Employers' Liability Act, which also requires uniform interpretation. *Second Employers Liability Cases*, 223 U. S. 1, 55 *et seq.* This uniformity requirement extends to the type of proof necessary for judgment. *New Orleans & N. E. R. Co.* v. *Harris*, 247 U. S. 367.

In many other cases this Court has declared the necessary dominance of admiralty principles in actions in vindication of rights arising from admiralty law.[10] *Belden* v. *Chase*, 150 U. S. 674, an 1893 decision which respondent relies upon as establishing a contrary rule, has never been thus considered in any of the later cases cited.

It must be remembered that the state courts have concurrent jurisdiction with the federal courts to try actions either under the Merchant Marine Act or in personam such as maintenance and cure. The source of the governing law applied is in the national, not the state, governments.[11] If by its practice the state court

[8] Colonna Shipyard v. Bland, 150 Va. 349, 358 (contributory negligence); Paulsen v. McDuffie, 4 Cal. 2d 111 (assumption of risk); Lieflander v. States S. S. Co., 149 Ore. 605 (burden of proof).

[9] Berwind-White Coal Mining Co. v. Eastern Steamship Corp., 228 F. 726; Port of New York Stevedoring Corp. v. Castagna, 280 F. 618.

[10] So. Pac. Co. v. Jensen, 244 U. S. 205; Chelentis v. Luckenbach, 247 U. S. 372; Knickerbocker Ice Co., 253 U. S. 149, 159; Carlisle Packing Co. v. Sandanger, 259 U. S. 255, 259; Messel v. Foundation Co., 274 U. S. 427, 434; and see Schuede v. Zenith S. S. Co., 216 F. 566. Disagreement over the Constitutional issues of the cases in the Jensen line has not extended to this principle. Cf. The Lottawanna, 21 Wall. 558, 575; Detroit Trust Co. v. The Barlum, 293 U. S. 21, 43.

[11] The Steamer St. Lawrence, 1 Black 522, 526-527.

were permitted substantially to alter the rights of either litigant, as those rights were established in federal law, the remedy afforded by the state would not enforce, but would actually deny, federal rights which Congress, by providing alternative remedies, intended to make not less, but more secure. The constant objective of legislation and jurisprudence is to assure litigants full protection for all substantive rights intended to be afforded them by the jurisdiction in which the right itself originates. Not so long ago we sought to achieve this result with respect to enforcement in the federal courts of rights created or governed by state law.[12] And admiralty courts, when invoked to protect rights rooted in state law, endeavor to determine the issues in accordance with the substantive law of the State.[13] So here, in trying this case the state court was bound to proceed in such manner that all the substantial rights of the parties under controlling federal law would be protected. Whether it did so, raises a federal question reviewable here under § 237(b) of the Judicial Code, 28 U. S. C. § 344(b).[14]

II. A seaman in admiralty who attacks a release has no such burden imposed upon him as that to which the Pennsylvania rule subjects him. Our historic national policy, both legislative and judicial, points the other way. Congress has generally sought to safeguard seamen's rights. The first Congress, on July 20, 1790, passed a protective act for seamen in the merchant marine service, safeguarding wage contracts, providing summary remedies for their breach, and requiring shipowners to keep on board fresh medicines in condition for use. 1 Stat. 131. The fifth Congress, July 16, 1798, 1 Stat. 605, originated our present system of marine hospitals for disabled seamen. The language of Justice Story, sitting on Circuit in 1823, described the solicitude with which admiralty has traditionally viewed seamen's contracts:

"They are emphatically the wards of the admiralty; and though not technically incapable of entering into a valid contract, they are treated in the same manner, as courts of equity are accustomed to treat young heirs, dealing with their expectancies, wards with their guardians, and *cestuis que* trust with their trustees. . . . If there is any undue inequality in the terms, any disproportion in the bargain, any sacrifice of rights on one side, which are not

[12] Erie R. R. v. Tompkins, 304 U. S. 64.

[13] Western Fuel Co. v. Garcia, 257 U. S. 242. Cf. The Hamilton, *supra*.

[14] See Claflin v. Houseman, 93 U. S. 130, 136-42; cf. Standard Oil Co. v. Johnson, 316 U. S. 481, 483.

compensated by extraordinary benefits on the other, the judicial interpretation of the transaction is, that the bargain is unjust and unreasonable, that advantage has been taken of the situation of the weaker party, and that *pro tanto* the bargain ought to be set aside as inequitable. . . . . And on every occasion the court expects to be satisfied, that the compensation for every material alteration is entirely adequate to the diminution of right or privilege on the part of the seamen." *Harden* v. *Gordon*, Fed. Cas. 6047 at pp. 480, 485,

In keeping with this policy, Congress has itself acted concerning seamen's releases in respect to wages by providing that a release for wages must be signed by a seaman in the presence of a shipping commissioner, and that even then "any court having jurisdiction may on good cause shown set aside such release and take such action as justice may require."[15] General Congressional policy is further shown in the Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. §§ 915, 916, in which all releases not made under the express terms of the Act are declared invalid.

The analogy suggested by Justice Story in the paragraph quoted above between seamen's contracts and those of fiduciaries and beneficiaries remains, under the prevailing rule treating seamen as wards of admiralty, a close one. Whether the transaction under consideration is a contract, sale, or gift between guardian and ward or between trustee and cestui, the burden of proving its validity is on the fiduciary. He must affirmatively show that no advantage has been taken; and his burden is particularly heavy where there has been inadequacy of consideration.[16]

The wardship theory has, as was recognized by the courts below, marked consequence on the treatment given seamen's releases. Such releases are subject to careful scrutiny. "One who claims that a seaman has signed away his rights to what in law is due him must be prepared to take the burden of sustaining the release as fairly made with and fully comprehended by the seaman." *Harmon* v. *United States*, 59 F. 2d 372, 373. We hold, therefore, that the burden is upon one who sets up a seaman's release to

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[15] 46 U. S. C. § 597. See Pacific Mail Steamship Co. v. Lucas, 258 U. S. 266; *Ibid.*, 264 F. 938.

[16] Michoud v. Girod, 4 How. 503, 556; cf. Magruder v. Drury, 235 U. S. 106, 120; Thorn Wire Co. v. Washburn & Moen Co., 159 U. S. 423, 443; Klamath Indians v. United States, 296 U. S. 244, 254; and United States v. Dunn, 268 U. S. 121, 131. The admiralty rule is well within the bounds put on these other relationships, since many trustee-cestui or guardian and ward contracts are voidable on the election of the beneficiary. See Wade v. Pulsifer, 54 Vt. 45, 62; Hatch v. Hatch, 9 Ves. 291 (1804); and cf. Madden, Domestic Relations, Ch. 12 and 3 Bogert, Trusts, § 493.

show that it was executed freely, without deception or coercion, and that it was made by the seaman with full understanding of his rights. The adequacy of the consideration and the nature of the medical and legal advice available to the seaman at the time of signing the release are relevant to an appraisal of this understanding.[17]

This general admiralty rule applies not only to actions for maintenance and cure but also to actions under Section 33 of the Merchant Marine Act. That law is to be liberally construed to carry out its full purpose, which was to enlarge admiralty's protection to its wards. *Warner* v. *Goltra*, 293 U. S. 155, 156, 162; *The Arizona*, 298 U. S. 110, 123. Being an integral part of the maritime law, rights fashioned by it are to be implemented by admiralty rules not inconsistent with the Act. *Socony Vacuum Co.* v. *Smith*, 305 U. S. 424, 430.

III. The Pennsylvania Supreme Court has concluded that in solving problems of procedural, as distinguished from substantive, law, the law court may apply its own doctrine; and that the locus of burden of proof presents a procedural rather than a substantive question.

Much of what we have said above concerning the necessity of preserving all of the substantial admiralty rights in an action at law is incompatible with the conclusion of the court below. The right of the petitioner to be free from the burden of proof imposed by the Pennsylvania local rule inhered in his cause of action. Deeply rooted in admiralty as that right is, it was a part of the very substance of his claim and cannot be considered a mere incident of a form of procedure. *Central Vermont Ry.* v. *White*, 238 U. S. 507, 511, 512; *Cities Service Co.* v. *Dunlap*, 308 U. S. 208, 212; and cf. *Lehigh Valley R. Co.* v. *Cornell Steamboat Co.*, 218 U. S. 264, 270. Pennsylvania having opened its courts to petitioner to enforce federally created rights, the petitioner was entitled to the benefit of the full scope of these rights. The cause is reversed for action not inconsistent with this opinion.

Reversed.

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[17] See the Harmon case, *supra*, and Bonici v. Standard Oil Co. of New Jersey, 103 F. 2d 437; Sitchon v. American Export Lines, 113 F. 2d 830; Hume v. Moore-McCormack Lines, 121 F. 2d 336. For somewhat comparable cases involving releases for personal injuries arising from non maritime torts, see Union Pacific Railway Co. v. Harris, 158 U. S. 326; Chesapeake and Ohio Railway Co. v. Howard, 178 U. S. 153, 167; Texas and Pacific Railway Co. v. Dashiell, 198 U. S. 521. Cf. Duncan v. Thompson, 315 U. S. 1.